IMPLEMENTATION OF THE FEDERAL CLEAN WATER ACT
(EPA Enforcement of the National Pollution Discharge Elimination System Permit Program)

(98-81)

HEARINGS

BEFORE THE

SUBCOMMITTEE ON INVESTIGATIONS AND OVERSIGHT

OF THE

COMMITTEE ON PUBLIC WORKS AND TRANSPORTATION HOUSE OF REPRESENTATIVES

NINETY-EIGHTH CONGRESS

SECOND SESSION

March 7, 8; September 19, 1984

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IMPLEMENTATION OF THE FEDERAL CLEAN WATER ACT

(EPA Enforcement of the National Pollution Discharge Elimination System Permit Program)

WEDNESDAY, MARCH 7, 1984

House of Representatives,
Subcommittee on Investigations and Oversight,
Committee on Public Works and Transportation,
Washington, DC.

The subcommittee met, pursuant to notice, at 10:07 a.m., in room 2247, Rayburn House Office Building, Hon. Elliott H. Levitas (chairman of the subcommittee) presiding.

Mr. Levitas. The subcommittee will please come to order.

The subcommittee this morning begins 2 days of hearings to review the U.S. Environmental Protection Agency's enforcement of the Clean Water Act.

The purpose of today's hearing is to hear from representatives of the U.S. General Accounting Office concerning their recent report which points out that as many as 82 percent of the industries and municipalities examined by GAO are not meeting the requirements of their Federal and State pollution abatement discharge permits.

This recent finding by GAO is not new. Nor are the reported causes of the problems they found. And, in this regard, I find it most disturbing that despite prior claims by various EPA officials who have come before this subcommittee to discuss this problem and how it could be resolved, that we once again find ourselves confronted with a study that not only shows that things have not improved, but that perhaps they have even deteriorated.

Is it because treatment systems are not designed properly? Is it because industries and cities do not provide adequate budgets for operation and maintenance and for the operators training of these plants? Is it because we have yet to see the implementation of a truly workable national industrial pretreatment program as the 1972 law envisioned?

Or is it perhaps because we simply lack a truly substantive enforcement program? Is it because there is a perception in the regulated community that the U.S. Environmental Protection Agency and the respective State agencies truly lack the will and capability, and the resources, to enforce the law?

Is it perhaps that cities and industries perceive and even believe that about the only punishment they risk for failing to comply with their discharge permit requirements or for failing to meet their treatment plant construction deadlines, is a few harsh words and an extension of their deadlines?

In short, is it because the law has not been vigorously and substantively enforced, and that industries and municipalities believe they can violate the law with virtual impunity?

During the past few years, we have also been told by various EPA officials that improvements were being made in the management of the Agency's program, and that the efficiencies that were being achieved were going to bring about better results with fewer resources. We have witnessed the reduction in resources. But the GAO report suggests to me that we have not seen better results. Indeed, it suggests that perhaps just the opposite has occurred.

It was with this in mind that I looked once again at a report this subcommittee issued and the full committee issued in the 97th Congress entitled, "Implementation of the Federal Water Pollution Control Act Concerning the Performance of Municipal Wastewater Treatment Construction Grants Program." And without belaboring the point, it seems to me that we are seeing and are about to hear testimony that exactly tracks what we found, what we heard, what we saw, and what we dealt with in this report that was issued in October 1981.

Let me just read one paragraph which I think is indicative of a great deal more. I found it by random this morning. It said:

> The subcommittee is not persuaded that the EPA's enforcement efforts to date and those of many states as well have been adequate. The overall track record of municipal enforcement in this program is rather undistinguished, particularly in those non grant-related areas where improvements can be made. The record demonstrates beyond question that many marginally performing plants and even many of those that have serious operating deficiencies do not require costly fiscal upgrading. Many problems can be remedied simply by upgrading operation and maintenance. In some instances, minor expenditures for replacement or modification of existing works will suffice. Yet, only recently this approach towards compliance has begun to receive emphasis.

That was in 1981. We will see what has happened since then.

I might also say that as I recall the last GAO report which was part of the basis for the hearings and the subsequent report I just identified, we found as we went through that that the numbers which GAO gave us at that time, which were equally startling, turned out to be perhaps an overstatement of what the dimensions of the real problem were at the time. That while it was true there was a large number—I think two thirds or more—that were found not to be in compliance, when we examined it closely, a large number of those turned out to be only marginally out of compliance, temporarily out of compliance, or technically out of compliance. And while nevertheless there was still a large number of serious noncomplying operations, the numbers perhaps overstated it and therefore detracted from the overall impact.

One of the things that I hope to find out from GAO this morning is whether we have that same type of situation. Also, I want to be certain that we are talking about new violations and additional plants and not the ones which were studied in the last report, as well as focusing on the fact that whatever it was EPA was going to do to improve the situation, obviously had not been done with regard to the plants and the report that we are going to be hearing about today.

So, in this regard I look forward to today's witnesses from the General Accounting Office and to discussing these points with them in further detail.

Tomorrow, we will hear from representatives of the U.S. Environmental Protection Agency about what they are doing to enhance the substance as well as the perception of the agency's enforcement program.

After those hearings are completed, it will be my purpose to make a decision as to whether additional witnesses need to be called in on this subject, for example, representatives of State agencies, municipalities, design engineers, and the like. But I think we will be in a better position to make that judgment within the next 2 or 3 days.

One other point as long as I am talking about the future. I wanted to state that the executive session which will be an executive briefing rather than a hearing, of the Justice Department and related agencies with respect to a hazardous waste issue—particularly one firm—will be scheduled within the next 10 days to 2 weeks. I wanted to make that announcement.

Before hearing from the GAO witnesses today, I would like to inquire whether my colleague, the ranking member, Mr. Molinari, the gentleman from New York, has an opening statement.

Mr. MOLINARI. Thank you, Mr. Chairman.

I am very pleased that the subcommittee is taking up the important question of compliance and enforcement of wastewater discharge permits.

I believe these hearings are very timely, especially in light of the recent General Accounting Office report which indicates that many of the cities and industrial facilities examined are exceeding their permit limits, that self-monitoring is sometimes inadequate, and that EPA enforcement of the Clean Water Act leaves something to be desired.

It is troubling that after almost 12 years of implementation of the Clean Water Act by the Environmental Protection Agency, we continue to find the recurrence of the same problems with permit issuance, discharge monitoring, and permit enforcement where limits are exceeded.

I am encouraged by the recent administration request for increased funding for the Environmental Protection Agency. However, it remains to be seen whether EPA will have adequate resources to do the job.

According to the report, 16,062 permit applications were awaiting processing as of October 30, 1982. In addition, as of that same period there were approximately 34,000 permits that had expired and would have to be reissued. These figures cited by GAO seem to conflict with Agency assurances that a reduction in their permitted enforcement resources would not result in any diminution in the Agency's ability to carry out the law.

I would hope that these hearings would shed some light on the question of whether or not EPA does in fact have adequate resources to carry out the program.

Realization of the goal of clean water for this country requires that an effective compliance monitoring and enforcement program be carried out. Otherwise, we find ourselves in a position wherein the Federal and State governments are handing out pieces of paper which are viewed by municipal and industrial dischargers as something not to be taken seriously.

In order to effectuate our goal of a clean environment, we must establish the Federal presence in the area of enforcement in order to assure that both municipal and industrial permittees will fully comply with the limitations set forth in their permits. Until that happens, we are wasting a considerable amount of resources.

I am hopeful that these hearings will serve to underscore our concern over the permit program and help move EPA to reduce the backlog and permit noncompliance.

Thank you, Mr. Chairman.

Mr. LEVITAS. Thank you very much, Mr. Molinari. I look forward to receiving the same information that you identified. I think this is the forum in which to find out just what is going on and where we are.

With those introductory remarks, I think we can hear from our first panel of witnesses today, and we have with us Hugh Wessinger, who is Senior Associate Director, Resources, Community and Economic Development Division of the U.S. General Accounting Office.

Mr. Wessinger is accompanied by Sam Madonia, Senior Group Director; Jim Van Blarcom, project manager; and Stan Ritchick who is a project member.

Gentlemen, we welcome you today. We look forward with considerable interest to your testimony.

The full text of your prepared statement will appear in the record at this point.

[Statement referred to follows:]

STATEMENT OF HUGH J. WESSINGER, SENIOR ASSOCIATE DIRECTOR, RESOURCES, COMMUNITY AND ECONOMIC DEVELOPMENT DIVISION, U.S. GENERAL ACCOUNTING OFFICE

Mr. Chairman and members of the Subcommittee: We are pleased to be here today to present our observations and concerns regarding the management of the National Pollutant Discharge Elimination System (NPDES) permit program—the principal means of controlling the nation's water pollution. Our comments will be based primarily on issues presented in our most recent report on the program entitled "Wastewater Dischargers Are Not Complying With EPA Pollution Control Permits" (GAO/RCED-84-53) issued on December 2, 1983.

Considering the magnitude and complexity of the NPDES program, which involves about 65,000 municipal and industrial dischargers, it cannot be expected to operate without some problems. What concerns us, however, is that we have reported serious noncompliance with permits for over five years. The persistence of these problems compromises the water quality and related environmental benefits of the billions of dollars invested in the construction and operation of wastewater treatment facilities. EPA most assuredly needs to improve its management, monitoring, and enforcement of the permit program to achieve the goals of the Clean Water Act.

THE NPDES PERMIT PROGRAM

The Clean Water Act established the NPDES permit program in 1972 as the principal tool for controlling pollution entering our waterways from point sources, such as factories and sewage treatment plants. The act requires that any facility discharging pollutants into the nation's waters must have an NPDES permit. The permits specify discharge limitations for particular pollutants, actions and time frames for complying with permit limits, and self-monitoring and reporting requirements. The permits must be renewed and upgraded at least every 5 years.

The permit program is managed by EPA or by the state where EPA has delegated program responsibility to the state. As of January 31, 1984, 36 of the 56 states and territories had received program delegation. Of the 65,000 permits issued as of January 1984, 49,000 were to industrial facilities and 16,000 to municipal facilities. EPA has classified about 8,000 permits as "major" based on discharge volume, the type of pollutants in the discharge, and, in the case of municipal facilities, the number of people served.

The four key questions we sought to answer in our most recent review were:

Is noncompliance with permit limits widespread and, if so, what are the causes of noncompliance?

What measures are employed by EPA and the states to monitor compliance with permit limits and what assurance is there that noncompliance is reported?

What enforcement actions against noncomplying permittees are available and used, and what are the results?

What controls exist to assure that all point sources of water pollution apply for and receive permits and upgrade permit limits when required?

We performed our work in three EPA regions and in six states: Iowa, Louisiana, Missouri, New York, and Texas. EPA administers the program in Texas and Louisiana, and the other four states have been delegated responsibility for administering the program.

NONCOMPLIANCE WITH PERMIT LIMITS

We reported in 1978 that significant noncompliance with permit limits existed at industrial facilities.[1] Again in 1980 we reported that significant noncompliance with permit limits existed at major municipal facilities.[2] Our most recent report showed that noncompliance with permit limits for both industrial and municipal dischargers remains widespread, frequent, and significant.

The numbers tell the story. Based on a random sample of 531 major dischargers—274 municipal and 257 industrial dischargers—in the six states, we estimated that 82 percent of all the dischargers in the six states exceeded their permit limits at least once during the 18-month review period ending March 31, 1982. More importantly, we estimated that 31 percent of the dischargers in the six states which exceeded their permit limits during the 18-month period were in significant noncompliance. We considered a discharger in significant noncompliance when concentration or quantity limits were exceeded by 50 percent or more for at least one permit parameter in at least 4 consecutive months during the 18-month period. The municipal dischargers were insignificant noncompliance more often than industrial dischargers by better than a two to one ratio.

EPA does not agree with our statistics. Its analysis of our data on the 531 dischargers showed noncompliance rates that were 7 to 12 percent lower than our rates. The difference is attributable to differences in the universe analyzed and in the reporting methodology. EPA's universe excluded dischargers with enforceable, interim permit limits, that is, facilities working toward more stringent limits. EPA included only those dischargers with final permit limits. About 25 percent of the 531 dischargers in our sample had interim limits. We included both types of permittees in our analysis because both interim and final permits are legally enforceable and, if exceeded, result in the discharge of more pollution than allowable. We note that subsequent to our report EPA changed its compliance reporting to include dischargers with both final effluent limits and with interim effluent limits.

Also, EPA derives its quarterly significant noncompliance rate by dividing the number of permittees not meeting the criteria at the end of a particular quarter by the total number of permittees. This methodology has certain limitations which tend to understate noncompliance. For example, if a permittee is in significant noncompliance for April and May but returns to compliance in June, the end of the quarter, that permittee would not be reported as being in significant noncompliance. The reporting method EPA uses shows only the compliance at a specific point in time; it does not show that permittees may have been in significant noncompliance for many months before the reporting month. Our use of an 18-month period is intended to overcome this end of the quarter "snapshot" limitation by presenting noncompliance data over a much longer historical time frame.

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[1] More Effective Action by the Environmental Protection Agency Needed to Enforce Industrial Compliance With Water Pollution Control Discharge Permits, CED-78-182, Oct. 17, 1978.

[2] Costly Wastewater Treatment Plants Fail to Perform As Expected, CED-81-9, Nov. 14, 1980.

ADEQUACY OF COMPLIANCE MONITORING

EPA and state agencies rely heavily on discharge monitoring reports (DMRs) to inform them of permit noncompliance. Not submitting or submitting incomplete DMRs could conceal serious discharge noncompliance.

Our most recent review showed that of the 531 major municipal and industrial dischargers in our sample, 40 dischargers—or 8 percent—did not submit one or more DMRs and 196 dischargers—or 37 percent—submitted one or more incomplete DMRs during the 18 months reviewed. Data excluded were the amount of toxic and conventional pollutants actually discharged, therefore making it impossible for EPA and the states to determine if there was noncompliance with the specific permit limits.

The accuracy of DMR data is questionable in many cases. Major municipal and industrial dischargers often use independent laboratories to analyze the discharged effluent and to complete the DMRs. But EPA studies have shown that the laboratory data is often inaccurate. Through its Laboratory Quality Assurance Program, EPA showed that in 1980 and 1982, 68 percent and 58 percent, respectively, of permittees sampled nationwide did not report results within acceptable limits for one or more pollutants. EPA published a third study in 1983 which showed that 50 percent of the permittees did not report results within acceptable limits.

Because self-monitoring by the discharger is not always an effective means of determining compliance with permits, EPA routinely performs various types of inspections to verify the accuracy of the self-monitoring data. The most complete inspection—the compliance sampling inspection—includes independent sampling and analysis of the discharger's effluent. The number of these inspections nationwide are dwindling: they declined 20 percent for municipal facilities and 48 percent for industrial facilities from fiscal years 1979 through 1981. EPA and state officials told us that limited resources are a contributing factor.

ENFORCEMENT POLICIES ALLOW CONTINUED PERMIT NONCOMPLIANCE

Compliance with permit conditions is the primary goal of enforcement action. Our work in the six states showed many instances of noncompliance continued for extended periods before formal enforcement action was taken, and in some cases continued for years even after enforcement action had been taken. Nationally, the number of EPA enforcement actions declined from 1,523 in fiscal year 1977 to 410 in fiscal year 1982. EPA enforcement actions declined by 41 percent from 1980 through 1982. Part of the explanation for the significant drop in enforcement actions in 1982 can be attributed to changes in EPA enforcement policy during that year. EPA's policy ranged from nonconfrontational to strong and aggressive and back to nonconfrontational. EPA has advised us that its enforcement activities increased significantly since our review—to a total of 875 enforcement actions in fiscal year 1983.

Several factors contributed to the continued permit noncompliance. Both EPA and the states have had a general policy which exempts from enforcement those municipalities which have applied for federal funds to upgrade existing or build new treatment facilities. This policy allows noncompliance to continue as long as grant funds are pending or construction is underway, which can take years. However, in January 1984, EPA issued a municipal enforcement compliance policy reversing its handling of noncomplying municipal dischargers. The policy provides that municipal dischargers must be required to meet permit conditions regardless of the status of federal grant funds.

Another factor limiting permit enforcement is EPA's lack of authority to assess monetary penalties for noncompliance. If EPA believes a discharger should be fined, the case must be referred to the Department of Justice for litigation, regardless of the nature of compliance. EPA had requested that Congress give it authority to administratively assess fines in 1977 and again in 1982. According to EPA, the Administration's current Clean Water Act legislative proposal includes a provision requesting this authority. We agree such authority would be helpful to EPA.

PERMIT APPLICATIONS NOT ACTED ON AND EXPIRED PERMITS NOT RENEWED

The last area we would like to discuss today, Mr. Chairman, concerns the fact that thousands of applicants have not been given permits, and thousands of dischargers hold expired permits. Both of these situations reduce the potential of the permit program to control and reduce water pollution.

The Clean Water Act requires that each facility discharging waste directly into navigable waters have a permit. However, this is not occurring. As of October 31, 1982, EPA reported that about 16,000 applications were awaiting processing: 200 applications were from major dischargers and 15,800 from minor dischargers. EPA and state officials told us that permitting priorities and limited resources were the primary reasons for the fact that not all permits were being issued. The Chief of the Water Permit Branch in Dallas told us that the Dallas region has the largest backlog of applications in EPA because it does not have the resources to issue all permits. Consequently, it can act only on major permit applications.

In October 1982, EPA reported that about 34,000 permits had expired or would expire before the end of 1982 which had not been reissued. Of these, 29,614 (87 percent) involved minor dischargers and 4,385 (13 percent) involved major dischargers. Fifty-four percent of those permits had expired before January 1, 1981. Another 16,500 permits are scheduled to expire in calendar year 1983 and 1984.

Various factors cited by EPA and state officials contribute to the large backlog of expired, unreissued permits. These include (1) the difficulties in establishing permit limits for industrial permits in the absence of EPA-developed technology guidelines, (2) a shortage of resources to rewrite permits, and (3) low priority in rewriting permits for minor dischargers.

The potential impact of not reissuing an expired permit is that the discharger may not be accomplishing the level of pollution reduction envisioned by the Clean Water Act. If these permits were rewritten, it is likely that many would contain stricter pollution limits, especially since the permits that have expired were written to control conventional pollutants, and did not always require control of toxics pollutants. The Chief of EPA's permit branch in Dallas estimated that 90 percent of second-round industrial permits would be more stringent, either by imposing limits on additional pollutants or by making more stringent the effluent limits on existing parameters.

Mr. Chairman, our December 1983 report presents our first all inclusive review of the NPDES permitting, monitoring, and enforcement activities. As we discussed earlier, problems continue to hinder the program. Noncompliance with NPDES permit limits continues at high levels. The discharge monitoring reports need continued independent assessments of accuracy and completeness. Laboratory data need improvement. Much stronger enforcement against permit noncompliance is needed. The backlog of permit applications needs attention. Expired permits need rewriting to include toxics control and to update conventional pollutant levels.

We made a number of recommendations to improve administration of the permit program, and in February 1984, EPA agreed to adopt them. We also recommended that EPA analyze the extent of resources directed to compliance and enforcement activities and present the Congress with the analysis as support for requesting additional resources. EPA also agreed to do this.

In summary, Mr. Chairman, we are concerned that if the permit program continues to exhibit its present high noncompliance rates and other shortcomings, dischargers may lose further incentives to operate treatment plants in accordance with their permits, knowing that little or no effective enforcement will occur. In addition, the many billions of dollars already spent to construct municipal and industrial treatment facilities will not realize their full potential.

We anticipate that the program's problems will likely continue because their underlying causes involve limited resources at both the federal and state levels. As discussed in our report, EPA and state resources expended for NPDES program activities had declined since fiscal year 1981. For example, EPA enforcement activities, funded at $19.2 million in fiscal year 1981, dropped to $13.3 million in fiscal year 1984.

EPA has allocated additional funds from a fiscal year 1984 supplemental appropriation for permit issuance and state program enforcement activities, and these resources should help to address some of the problems we discussed in the report. For fiscal year 1985, EPA has requested a $2.3 million increase for enforcement.

Mr. Chairman, this concludes my prepared remarks. We will be pleased to answer any questions you may have.

Mr. LEVITAS. Please proceed.

TESTIMONY OF HUGH WESSINGER, SENIOR ASSOCIATE DIRECTOR, RESOURCES, COMMUNITY AND ECONOMIC DEVELOPMENT DIVISION, GENERAL ACCOUNTING OFFICE; SAM MADONIA, SENIOR GROUP DIRECTOR; JIM VAN BLARCOM, PROJECT MANAGER; AND STAN RITCHICK, PROJECT MEMBER

Mr. WESSINGER. Thank you, Mr. Chairman and members of the subcommittee.

We are pleased to be here today to present our observations and concerns regarding the Environmental Protection Agency's management of the National Pollutant Discharge Elimination System's Permit Program—the principal means of controlling the Nation's water pollution. Our comments will be based primarily on issues presented in our most recent report on the program entitled "Wastewater Discharges Are Not Complying With EPA Pollution Control Permits" issued on December 2, 1983.

Considering the magnitude and complexity of the NPDES Program, which involves about 65,000 municipal and industrial dischargers, it cannot be expected to operate without some problems. What concerns us, however, is that we have reported serious noncompliance with permits for over 5 years. The persistence of these problems compromises the water quality and related environmental benefits of the billions of dollars invested in the construction and operation of wastewater treatment facilities. EPA most assuredly needs to improve its management, monitoring, and enforcement of the permit program to achieve the goals of the Clean Water Act.

The Clean Water Act established the NPDES Permit Program in 1972 as the principal tool for controlling pollution entering our waterways from point sources, such as factories and sewage treatment plants. The act requires that any facility discharging pollutants into the Nation's waters must have a NPDES permit. The permits specify discharge limitations for particular pollutants, actions and time frames for complying with permit limits, and self-monitoring and reporting requirements. The permits must be renewed and upgraded at least every 5 years.

The permit program is managed by EPA or by the States where EPA has delegated program responsibility to the State. As of January 31, 1984, 36 of the 56 States and territories had received program delegation. Of the 65,000 permits issued as of January 1984, 49,000 were to industrial facilities and 16,000 to municipal facilities. EPA has classified about 8,000 permits as major based on discharge volume, the type of pollutants in the discharge, and, in the case of municipal facilities, the number of people served.

The four key questions we sought to answer in our most recent review were:

One, is noncompliance with permit limits widespread and, if so, what are the causes of noncompliance?

Two, what measures are employed by EPA and the States to monitor compliance with permit limits and what assurance is there that noncompliance is reported?

Three, what enforcement actions against noncomplying permittees are available and used, and what are the results?

Four, what controls exist to assure that all point sources of water pollution apply for and receive permits and upgrade permit limits when required?

We performed our work in three EPA regions in six States: Iowa, Louisiana, Missouri, New Jersey, New York, and Texas. EPA administers the program in Texas and Louisiana, and the other four States have been delegated responsibility for administering the program.

Regarding the first question on noncompliance of permit limits, we reported in 1978 that significant noncompliance with permit limits existed at industrial facilities. Again in 1980 we reported that significant noncompliance with permit limits existed at major municipal facilities. Our most recent report showed that noncompliance with permit limits for both industrial and municipal discharges remains widespread, frequent, and significant.

The numbers tell the story. Based on a random sample of 531 major dischargers—274 municipal and 257 industrial dischargers—in the six States, we estimated that 82 percent of all the dischargers in the six States exceeded their permit limits at least once during the 18 month review period ending March 31, 1982. More importantly, we estimated that 31 percent of the dischargers in the six States which exceeded their permit limits during the 18-month period were in significant noncompliance. We considered a discharger in significant noncompliance when concentrations or quantity limits were exceeded by 50 percent or more for at least one permit parameter in at least 4 consecutive months during the 18-month period. The municipal dischargers were in significant noncompliance more often than industrial dischargers by better than a 2-to-1 ratio.

EPA does not agree with our statistics. Its analysis of our data on the 531 dischargers showed noncompliance rates that were 7 to 12 percent lower than our rates. The difference is attributable to differences in the universe analyzed and in the reporting methodology. EPA's universe excluded dischargers with enforceable, interim permit limits, that is, facilities working toward more stringent limits.

EPA included only those dischargers with final permit limits. About 25 percent of the 531 dischargers in our sample had interim permits. We included both types of permittees in our analysis because both interim and final permits are legally enforceable and, if exceeded, result in the discharge of more pollution than allowable. We noted that subsequent to our report EPA changed its compliance reporting to include dischargers with both final effluent limits and with interim effluent limits.

Also, EPA derives its quarterly significant noncompliance rate by dividing the number of permittees not meeting the criteria at the end of a particular quarter by the total number of permittees. This methodology has certain limitations which tend to understate noncompliance. For example, if a permittee is in significant noncompliance for April and May but returns to compliance in June, the end of the quarter, that permittee would not be reported as being in significant noncompliance.

The reporting method EPA uses shows only the compliance at a specific point in time; it does not show that permittees may have been in significant noncompliance for many months before the reporting month. Our use of an 18-month period is intended to overcome this end of quarter snapshot limitation by presenting noncompliance data over a much longer historical time frame.

Turning now to the question of compliance monitoring. EPA and State agencies rely heavily on discharge monitoring reports—referred to as DMR's—to inform them of permit noncompliance. Not submitting or submitting incomplete DMR's could conceal serious discharge noncompliance.

Our most recent review showed that of the 531 major municipal and industrial dischargers in our sample, 40 dischargers—or 8 percent—did not submit one or more DMR's and 196 dischargers—or 37 percent—submitted one or more incomplete DMR's during the 18-month review. Data excluded were the amount of toxic and conventional pollutants actually discharged, therefore making it impossible for EPA and the States to determine if there was noncompliance with the specific permit limits.

The accuracy of DMR data is questionable in many cases. Major municipal and industrial dischargers often use independent laboratories to analyze the discharged effluent and to complete the DMR's. But EPA studies have shown that the laboratory data is often inaccurate. Through its Laboratory Quality Assurance Program, EPA showed that in 1980 and 1982, 68 percent and 58 percent respectively, of permittees sampled nationwide did not report results within acceptable limits for one or more pollutants.

EPA published a third study in 1983 which showed that 50 percent of the permittees did not report results within acceptable limits.

Because self-monitoring by the discharger is not always an effective means of determining compliance with permits, EPA routinely performs various types of inspections to verify the accuracy of the self-monitoring data. The most complete inspection—the compliance sampling inspection—includes independent sampling and analysis of the discharger's effluent. The number of these inspections nationwide are dwindling: they declined 20 percent for municipal facilities and 48 percent for industrial facilities from fiscal year 1979 through 1981. EPA and State officials told us that limited resources are a contributing factor.

The third question we dealt with was the enforcement of permit conditions. Compliance with permit conditions is the primary goal of enforcement action. Our work in the six States showed many instances of noncompliance continued for extended periods before formal enforcement action was taken, and in some cases continued for years even after enforcement action had been taken.

Nationally, the number of EPA enforcement actions declined from 1,523 in fiscal year 1977 to 410 in fiscal year 1982. EPA enforcement actions declined by 41 percent from 1980 through 1982. Part of the explanation for the significant drop in enforcement actions in 1982 can be attributed to changes in EPA's enforcement policy during that year. EPA's policy ranged from nonconfrontational to strong and aggressive and back to nonconfrontational. EPA has advised us that its enforcement activities increased significantly since our review—a total of 875 enforcement actions in fiscal year 1983.

Several factors contributed to the continued permit noncompliance. Both EPA and the States have had a general policy which exempts from enforcement those municipalities which have applied for Federal funds to upgrade existing or build new treatment facilities. This policy allows noncompliance to continue as long as grant funds are pending or construction is underway, which can take years.

However, in January 1984, EPA issued a municipal enforcement compliance policy reversing its handling of noncomplying municipal dischargers. The policy provides that municipal dischargers must be required to meet permit conditions regardless of the status of the Federal grant funds.

Another factor limiting permit enforcement is EPA's lack of authority to assess monetary penalties for noncompliance. If EPA believes a discharger should be fined, the case must be referred to the Department of Justice for litigation, regardless of the nature of compliance. EPA had requested that Congress give it authority to administratively assess fines in 1977 and again in 1982. According to EPA, the administration's current Clean Water Act legislative proposal includes a provision requesting this authority. We agree such authority would be helpful to EPA.

The last area we would like to discuss today, Mr. Chairman, concerns the fact that thousands of applicants have not been given permits, and thousands of dischargers hold expired permits. Both of these situations reduce the potential of the permit program to control and reduce water pollution.

The Clean Water Act requires that each facility discharging waste directly into navigable waters have a permit. However, this has not occurred. As of October 31, 1982, EPA reported that about 16,000 applications were awaiting processing; 200 applications were from major dischargers and 15,800 from minor dischargers. EPA and State officials told us that permitting priorities and limited resources were the primary reasons for the fact that not all permits were being issued. The Chief of the Water Permits Branch in Dallas told us that the Dallas region has the largest backlog of applications in EPA because it does not have the resources to issue all permits; consequently, it can act only on major permit applications.

In October 1982, EPA reported that about 34,000 permits had expired or would expire before the end of 1982 which had not been reissued. Of these, 29,614—or 87 percent—involve minor dischargers and 4,385—13 percent—involve major dischargers; 54 percent of those permits had expired before January 1, 1981. Another 16,500 permits are scheduled to expire in calendar years 1983 and 1984.

Various factors cited by EPA and State officials contribute to the large backlog of expired, unreissued permits. These include: First, the difficulties in establishing permit limits for industrial permits in the absence of EPA-approved technology guidelines; second, a shortage of resources to rewrite permits; and third, low priority in rewriting permits for minor dischargers.

The potential impact of not reissuing an expired permit is that the discharger may not be accomplishing the level of pollution reduction envisioned by the Clean Water Act. If these permits were rewritten, it is likely that many would contain stricter pollution limits, especially since the permits that have expired were written to control conventional pollutants and did not always require control of toxic pollutants. The Chief of EPA's Permit Branch in Dallas estimated that 90 percent of second-round industrial permits would be more stringent, either by imposing limits on additional pollutants or by making more stringent the effluent limits on existing parameters.

Mr. Chairman, our December 1983 report represents our first all-inclusive review of the NPDES permitting, monitoring, and enforcement activities. As we discussed earlier, problems continue to hinder the program. Noncompliance with permit limits continues at high levels. The discharge monitoring reports need continued independent assessment of accuracy and completeness. Laboratory data needs improvement. Much stronger enforcement against permit noncompliance is needed. The backlog of permit applications needs attention. Expired permits need rewriting to include toxics control and to update conventional pollutant levels.

We made a number of recommendations to improve administration of the permit program and, in February 1984, EPA agreed to adopt them. We also recommended that EPA analyze the extent of resources directed to compliance and enforcement activities and present the Congress with the analysis as support for requesting additional resources. EPA also agreed to do this.

In summary, Mr. Chairman, we are concerned that if the permit program continues to exhibit its present high noncompliance rates and other shortcomings, dischargers may lose further incentive to operate treatment plants in accordance with their permits, knowing that little or no effective enforcement will occur. In addition, the many billions of dollars already spent to construct municipal and industrial treatment facilities will not realize their full potential.

We anticipate that the program's problems will likely continue because their underlying causes involve limited resources at both the Federal and State levels. As discussed in our report, EPA and State resources expended for NPDES program activities had declined since fiscal year 1981. For example, EPA's enforcement activities, funded at $19.2 million in fiscal year 1981, dropped to $13.3 million in fiscal year 1984.

EPA has allocated additional funds from a fiscal year 1984 supplemental appropriation for permit issuance and State program enforcement activities, and these resources should help to address some of the problems we discussed in this report. For fiscal year 1985, EPA has requested a $2.3 million increase for enforcement.

Mr. Chairman, this concludes my prepared remarks. We will be pleased to respond to your questions.

Mr. LEVITAS. Thank you very much, Mr. Wessinger, for your testimony.

If I had heard this for the first time, I would have said I am surprised. Obviously, I am not surprised. But what I am concerned about is that it is even worse than I had suspected and it is a sequel to everything we have heard in the past, except the dimensions seem to be more severe.

We are not just talking about the noncompliance as a technical matter. We are talking about putting effluent into our streams, and our lakes, and our water resources, that have not been properly treated.

The whole essence of the Construction Grants Program, the Clean Water Act is based upon the permit itself. If the permit is either expired, is not being complied with, then the billions of dollars, the multibillions of dollars that we have, as taxpayers, invested in this program are not achieving anything.

The water quality is being adversely affected and it is a wasteful sham. To understate it, it is disturbing to me once again to hear the same problems—and I just wonder, do you think there is any hope or are we just going to be hearing this in 3 or 4 years? Is it so bad that there is no way to get out of this?

Mr. WESSINGER. No; I do not really think it is that bad that we cannot get out of it. I think it is just like so many other things, if you are dedicated and you really want to do a good job and put the resources and the time into it, yes, it can be fixed.

I think one of the most important things that we all have to come to terms with is, will we ever achieve a 100-percent enforcement. Is there something below 100 percent and where does the break-even come? Those are very difficult questions to answer.

But certainly, I think a 31-percent significant noncompliance and 82 percent in total cannot, I believe, in anyone's definition be considered adequate compliance.

Mr. LEVITAS. On page 3 of your testimony you spell out what you mean by significant noncompliance. You also, on page 7 of the report itself as well as in your testimony today, you report that 31 percent of the dischargers which exceeded permit limits were in significant noncompliance with those limits.

Now, on page 10 of the report you note that EPA disagreed with our definition of significant noncompliance and said its data showed slow but continuous improvements in compliance rates during the period covered by your study and since that time.

You then go on to note on page 11 of your report that EPA excludes permittees on interim permit limits and evaluates compliance only for permittees on final effluent limits.

You indicated in your testimony today that EPA has changed that policy. Would you expand on this and explain what it all means? Is EPA counting the beans differently than the GAO does? Why does this make a difference if we use EPA's data, are we missing something of significance and in doing so ending up with a false picture?

Mr. RITCHICK. Mr. Chairman, we disagreed with EPA's definition on, first of all, excluding facilities that are on interim permit limits because we believe that they are just as enforceable as the final limits. If they are exceeded, the end result is the discharge of more pollutants into the water than allowable.

EPA also took issue or disagreed with our 18-month period that we used in our report. They felt that it resulted in a cumulative type of noncompliance whereas EPA is concerned primarily with a particular point in time at the end of a quarter.

EPA is right in their assessment of saying our figures were cumulative. But we feel that what it presents noncompliance over a longer historical period of time and shows during an 18-month period how well or how persistently these different facilities were continuing to noncomply with their permit limits.

Yes, sir, EPA recently amended their reporting procedures. I believe it was the quarterly report that came out in December of 1983 where they began to report noncompliance statistics for both industrial and municipal facilities that are on final permit limits as well as those which are on interim permit levels.

There is a wide discrepancy between the two. I believe the figures, for example, on municipals show a noncompliance rate of 16 percent for those facilities on final limits. But when you go to the interim limits, they are showing a 27-percent noncompliance rate. So, there is a vast difference. But basically, those are the two areas where EPA disagreed. We are not saying that one is wrong and one is right. But we are saying we feel our method presents a picture of noncompliance over a longer period of time and avoids end of the quarter snapshot.

Mr. LEVITAS. That snapshot point that you make on page 5 of your testimony, I think is a very appropriate criticism of EPA's method because it really does not tell you what is going on except at that one moment in time.

Mr. RITCHICK. Right, sir. They are more concerned with what is occurring at a particular point in time. That is why a facility which is in noncompliance for 2 months of the quarter but comes back into compliance at the end of that, the last month of the quarter, is excluded from EPA's calculations.

Mr. MOLINARI. Would the gentleman yield?

Mr. LEVITAS. I will be happy to yield.

Mr. MOLINARI. This is a very serious question, and in reading the GAO report and listening to your oral testimony today, I am getting an impression that there is a statistical game that has been played with these quarterly reports. I would like to be corrected if I am wrong in that assumption.

It seems to me that what I am hearing and reading is that toward the end of the quarter administrative orders would be issued, which in many cases would have a tendency to reduce the number of those that are in noncompliance.

Does this appear to be a deliberate attempt on the part of EPA to show more units in compliance and, conversely, to reduce those that are out of compliance?

Mr. WESSINGER. Well, we did not see anything being deliberate. One thing you have to keep in mind on those quarterly figures, those are averages for the month; am I not right on that. It is a monthly average rather than at a particular day in time.

Mr. MOLINARI. A particular month.

Mr. RITCHICK. It is possible that orders could have been issued at the end of the month to bring somebody in compliance. But we did not find any kind of evidence that would indicate that that was an intentional operation on the part of EPA or the State just to make themselves look better in terms of saying, well, there is a facility out there that was not complying the first 2 months, we are going to issue an administrative order, get that facility into compliance and then, in turn, not report them.

It is how the system works but we did not find any evidence that it was an intentional type of a setup.

Mr. MOLINARI. I am happy to hear that.

Did you see more administrative orders issued consistently in the third month as opposed to the first 2 months of that quarter?

Mr. VAN BLARCOM. No; we did not. I think we might just make one overall observation and that is that EPA is pretty much up front with how it defines what goes into these quarterly noncompliance reports.

But even being up front, just the fact of eliminating from noncompliance facilities that come into compliance during the last month of the quarter and also not considering facilities that are on enforceable interim limits automatically leads to, what would be a lower statement of overall noncompliance rates for the quarter.

Mr. LEVITAS. The obvious question in followup to Congressman Molinari's line is, Why does EPA do it that way? It obviously gives not only a better picture from their point of view, it gives a distorted picture of reality.

Now, why do they do it?

Mr. RITCHICK. Well, in responding to our report and in talking to them, they basically said that their primary concern was the extent of noncompliance at a particular point in time.

Mr. LEVITAS. Why?

Mr. RITCHICK. Because this way they could find out which facilities were candidates for enforcement action. They wanted to know at any one point in time what the workload was for enforcement in terms of noncompliance and how many particular dischargers they had to deal with.

I am not saying that is valid but that is the rationale they provided to us.

Mr. LEVITAS. Mr. Van Blarcom, you want to comment?

Mr. VAN BLARCOM. Yes. I just wanted to say that I guess their justification for not including facilities on interim limits in their statistics was their statement as far as facilities on interim limits, facilities that are going to be upgrading to comply with final limits, they would much rather concentrate on reviewing what those people are doing in terms of construction as opposed to concentrating on their effluent violations.

Here again, though, some facilities are on interim limits for years and it seems that it is probably unrealistic to keep them out of any overall noncompliance statistics.

Mr. LEVITAS. All right, let me just clear up one thing statistically. Is the 31 percent of the plants that are in significant noncompliance, is that 31 percent of the 82 percent, or is it 31 percent of the overall sample?

Mr. RITCHICK. It is 31 of the 82 percent, Mr. Chairman.

Mr. LEVITAS. So that means 24 or 25 percent of all permittees are in significant noncompliance.

Mr. RITCHICK. Right, roughly a quarter of the ones that we identified.

Mr. LEVITAS. And what does that translate into numbers and discharges across the country?

Mr. RITCHICK. It would be difficult to try to project that.

Mr. LEVITAS. Well, how many permittees are there?

Mr. RITCHICK. There were approximately 65,000 as of the end of January 1984.

Mr. LEVITAS. So, you are talking about 20,000 permittees, approximately, who are in significant noncompliance.

Mr. RITCHICK. Well, we cannot take this information and statistically project it. We did a sample of six States. We felt the six States were representative, and provided a good cross-section of the States, and broad geographic coverage.

Mr. LEVITAS. Right.

Mr. RITCHICK. But I do not believe these results are statistically projectable across the entire universe of the facilities.

Mr. LEVITAS. Does this vary widely from the information you produced in your last report in 1981, or 1980?

Mr. RITCHICK. Well, the numbers are basically the same.

Mr. LEVITAS. So, what I am saying is, I presume you take a representative sample and apply a particular protocol in order to provide information that is consistent and verified by the fact that it is, as I recall it, very consistent with what you found the last time.

Mr. RITCHICK. Right. The 1980 report and the 1983 report, in both cases we took random samples, and the 1980 report showed a 31-percent significant noncompliance rate for municipals, and in the 1983 report we are estimating a 38-percent significant noncompliance rate for the municipals. But it is 31 percent overall.

Mr. LEVITAS. Is it getting better or worse, according to those?

Mr. RITCHICK. There are so many differences in the two studies, the fact we used different time frames in our 1983 report, we looked at facilities that were on final permit limits and those that were on interim. In our 1980 study, we limited ourselves to only those on final limits.

It is difficult to say whether it is getting better or worse, but I think we can definitely say it is a continuing problem out there.

Mr. LEVITAS. It is bad, is it not?

Mr. WESSINGER. Mr. Chairman, could I just add one comment on your projections to the nationwide.

Mr. LEVITAS. Yes.

Mr. WESSINGER. We think the six States that we went to are representative. But statisticians tell us that you cannot just take that percentage and project it. You may have a margin of error in there.

While probably you arrive at a rough estimate of what it would be nationwide, I think the only thing we want to do is just caution that a statistician would probably disagree with you.

Mr. LEVITAS. All right. Now, let me ask you this, why do you think there are about twice as many municipalities that are in significant noncompliance as compared with industrial dischargers? Private industry seems to be doing a better job than government.

Mr. RITCHICK. Well, the primary reason we mentioned in the report is the fact that the industrial facilities over the years have received priority at the expense of the municipals.

The other thing is that the States and EPA have had a policy—although unwritten—of basically not enforcing against municipal facilities if they had either applied for a grant or were under construction. I would think you would have to say that those are the two primary reasons. One is the lack of priority and then, the lack of Federal money were the bases for not taking enforcement action against the noncomplying municipals.

Mr. **Levitas**. You mean lack of enforcement money?

Mr. **Ritchick**. No, lack of construction money, money under the Construction Grants Program to build facilities or upgrade facilities.

Mr. **Levitas**. Well, is not a portion of the problem operation and maintenance?

Mr. **Ritchick**. Yes, sir. It is a variety of problems.

Mr. **Levitas**. Well, why would the Federal Government want to pay twice for the same plant? If somebody got their 80-percent plant built and then screws it up because he does not know how to operate it, why should they expect Federal taxpayers to build it for them again?

Mr. **Ritchick**. Well, apparently that has been a problem. In our 1980 report, we pointed that out that there was this difficulty in establishing clear lines of authority when a facility was built and did not operate, who was responsible for it.

As a result of the 1981 amendments you now have this situation where facilities have a year-long performance period at the end of which the owner and operator of the facility has to certify that it is in proper operation, otherwise they have to correct it at their own expense.

So, you have a situation where this will take care of the new problems, the facilities that are being constructed. But this has been, I think, an age-old problem of finger pointing and of saying who is at fault and why the plant is not operating. I think it is, as we pointed out in 1980, that EPA and the States have been reluctant to get involved in basically legally determining who——

Mr. **Levitas**. That is precisely why we made the recommendation as we did in 1981 that there needed to be fixing of accountability.

Now, I just have two more questions on this round. I have a lot of questions. Let me just ask you these two more at this point.

Page 6 of your testimony today, Mr. Wessinger, the bottom of the page you say, "Part of the explanation for the significant drop in enforcement actions in 1982," that is down from 1,500 in 1977 to 400 in 1982, "can be attributed to changes in EPA enforcement policy during that year." I assume you mean during that year of 1982?

Mr. **Wessinger**. Correct.

Mr. **Levitas**. "EPA's policy ranged from nonconfrontational to strong and aggressive, and back to nonconfrontational."

Would you explain that and relate it to those numbers that you have provided?

Mr. **Van Blarcom**. Well, I guess the years 1981 and 1982 were sort of years of confusion as far as EPA enforcement policy was concerned.

The enforcement policy during those 2 years was being reworked, and during the year 1982, a series of guidance memos came out from EPA headquarters to the regions and suggesting to the regions in their own enforcement actions and in dealing with the States that they had cognizance over that EPA's approach should encourage voluntary compliance measures.

In the middle of 1982, a second memo came out which was understood in the EPA regional offices that we covered during this job, indicating that the nonconfrontational mode was being dropped and there should be some aggressive action to build up the statistics.

Later on that same year, a third memo came out from EPA headquarters, indicating that the policy should be to treat every discharger in noncompliance with his permit in good faith and pretty much signal the return to the nonconfrontational approach.

So, there was confusion. I think the confusion was probably borne out in the statistics.

Mr. LEVITAS. In 1977, which is the year you compare it to, there was a consistent confrontational approach; is that a fair statement? Or a more vigorous enforcement.

Mr. VAN BLARCOM. I probably have to say the policy was probably characterized as being more aggressive in the late 1970's than it was in the confusing period of 1980 to 1982.

Mr. LEVITAS. My last question is this, on this round, Mr. Wessinger. I asked you as an opener, is it really hopeless? This is the son of your last two reports. I mean, this is the same thing.

Mr. WESSINGER. Right.

Mr. LEVITAS. You have them on a shelf now, do you not? You just pull it off the shelf and change the date. It is the same report.

Now, my question is, you know, what can we do if anything? We have railed at EPA; we have passed legislation trying to deal with some of these problems; we have outlined administrative remedies; we have tried to restructure the program to give incentives to municipalities to do what they ought to be doing. And yet, we are still seeing this type of data.

I mean, short of going out and hitting somebody with a 2 by 4, what can we do? What can be done? What mechanism, what tool, what means, what legislation, what can we do to get these figures to begin to move in a constructive direction?

Mr. WESSINGER. Well, I am not sure I have the answer to that complex question. Obviously, the thing that EPA keeps harping on is the fact that they do not have enough resources.

Mr. LEVITAS. Incidentally, having said that, I want to interrupt you right there just to make it a matter of record. For 1½ years, high officials at EPA have testified under oath before this subcommittee that they had all the resources they need. That the cutbacks in their programs were not going to affect their performance. That they could get better for less, et cetera, et cetera, et cetera.

Now you are saying that not only is that not true but they are telling you that that is not true.

Mr. WESSINGER. That is exactly right. Every time we go on and we find that the agency is not doing something that is called for either by law or by regulation, you find out "Why are you not doing that" and the answer we get almost every time is that we do not have enough resources, we just cannot do it. We just do not have enough people, we cannot go out and do all this with the resources that we have.

So, that seems like the first answer that you have to come up with. They have to admit to the fact that they have to have more resources and they have to admit to the fact that they really want to enforce this program. I think that may be where the problem lays; that is, top management is not admitting that they want to enforce this.

Once they have decided that and come to Congress, as we have recommended to the administrator that he do, that he analyze his resources and come to the Congress and tell the Congress how many resources he thinks he needs to do this. And he agreed to do that in response to our recommendation.

Once they do that and the resources are put in there and the municipalities and industry see that EPA is serious about enforcement, then I think we will see a turnaround in it.

Mr. LEVITAS. Well, I think you are probably right on both scores, Mr. Wessinger. The truth of the matter is, I have not seen the administrator there yet who is really serious about enforcing this program. Every one of them who I have heard testify over 10 years has come in, particularly right after they get there and say, "We are going to really enforce this program. We are going to stick it to the cities and the States. We are going to make them shape up, and not a single one of them has done it. They are paper tigers because they get into political problems and do not want to enforce the program.

I think if you do not want to enforce a program you are going to get the kinds of results that we are seeing here.

Well, I appreciate that opening presentation and I know you are going to get some very good questions from the rest of the members of this panel, and I will have some additional ones myself.

The gentleman from New York, Mr. Molinari.

Mr. MOLINARI. Thank you, Mr. Chairman.

I would like to pick up on the question of administrative orders, but first let me ask if any of you gentlemen have seen the IG's report on region VI?

Mr. WESSINGER. I have not.

Mr. MOLINARI. When I asked you before about the use of administrative orders by EPA to reduce the numbers of those in noncompliance, you stated that you did not see any pattern to this, but that it was just something that was done in the normal course of business and was not used in order to reduce the figures of noncompliance. Is that correct?

Mr. VAN BLARCOM. Yes, sir.

Mr. MOLINARI. OK; I am going to read to you an excerpt from the inspector general's report of region VI. On page 2 of that report it says:

> We found no wrong doing on the part of region 6 employees in reporting the number of facilities in noncompliance with effluent discharge levels under the act. Nevertheless, region 6 has not effectively discharged its responsibilities under 40 CFR 122.18 to report facilities in noncompliance.

It goes on to say,

> Deficiencies noted in the region's QNCR process include use of administrative orders to decrease instances of noncompliance and to impose unauthorized administrative penalties.

Now, I read that as suggesting that this was a deliberate act, and that use of the AO's was used, at least in part, to reduce the statistical noncompliance figures which might have proved to be some embarrassment to EPA.

Would you care to comment about it?

Mr. **Madonia**. We did not find the use of that intentionally. However, even if EPA issued an administrative order in the last month of the quarter, hopefully if the plant or the facility continued to be in noncompliance, that plant should still show up as in noncompliance.

The issuance of the administrative order itself should not remove the facility from the quarterly noncompliance report. The determining factor is whether or not it is still in noncompliance.

Mr. **Molinari**. That is one of the differences between your examination and EPA's. You felt that the statistical data base furnished by them should show these facilities still noncompliance and not be removed because an AO was issued.

Mr. **Madonia**. That is right.

Mr. **Molinari**. Going back to page 3 in your testimony, interest to the subcommittee would be a comparison on the actions taken by the States where the authority had been delegated to the States to issue permits and where EPA retained the authority to do so itself.

Can you describe what you found in the way of differences between EPA and the States?

Mr. **Van Blarcom**. Well, pretty much as far as enforcement actions are concerned, the informal actions that are available to the four States that had delegated programs that we covered were pretty much the same ones that were available to the EPA regions that were running the programs in Louisiana and Texas. Also, New Jersey was not a delegated program during the time of our review.

Of course, those informal actions, you know, include sending out a warning letter, calling up a facility operator on the phone or meeting with company or city officials to try to encourage voluntary noncompliance.

Now, as far as formal enforcement actions are concerned, some of the States that we went to have the administrative authority to levy fines against noncomplying dischargers without going through a court of law.

EPA, of course, does not have the administrative authority to levy fines. In the event it wants to levy a fine against a discharger, it either has to try to get a State to bring a State action or it has to refer the matter to the Department of Justice which in the past has proven to be a long and time-consuming process.

EPA, of course, has requested that fining authority in the past under the NPDES Program, similar to what they already have under the Clean Air Act.

In terms of effectiveness of enforcement, I would have to say that in both the programs that are delegated to the States and the programs that were run by EPA, there were some pluses and there were some minuses. Nothing really stood out as being a major plus or a major minus on either side.

I think one of the few innovative techniques we identified during the course of our review was the program that New York State has which subsidizes the operation and maintenance costs of municipal sewage treatment plants.

Those subsidies are geared to a great extent to compliance or noncompliance with the facility's permit.

Mr. **Molinari.** That is the point I was leading to. In those instances where the State has taken over the issuance of the permits, EPA still has a role in monitoring the action of the States to be sure that they are doing their jobs; am I correct in that?

Mr. **Van Blarcom.** Right. A program is delegated to the State when in EPA's mind not only has the State requested delegation but EPA believes that they are ready for delegation.

Subsequent to delegation, EPA has the responsibility to perform semiannual oversight reviews of how the State is carrying out its delegated program. And in the event the State does not appear to be taking strong enough enforcement action against one or more noncompliers, EPA has the right to issue a notice of violation to the State and, if necessary, supersede the State in taking enforcement action against one or more facilities.

Mr. **Molinari.** I understand that, and I understand that EPA has not surrendered its enforcement capabilities in its delegation of authority. But I would have to assume that when you have another layer of government; namely, the States, issuing the permits and monitoring, and then you have EPA on top as opposed to the other situations where it is just simply EPA, that you would have greater oversight and monitoring occurring because you have both involved.

You are saying that there really is no difference in terms of enforcement. Is that correct?

Mr. **Wessinger.** I think that is a fair statement.

Mr. **Molinari.** Why should that be?

Mr. **Wessinger.** Well, I do not know that we got into that. I do not think the scope of our work allowed us to get into trying to identify why it is that you do not see a difference between the delegated States versus those that EPA controls.

You know, you can look at appendix 1 in our report. It shows the significant noncompliers. Texas and Louisiana were States that EPA has control of, and the other four States are the ones that have been delegated. If you look at those percentages, while you see some difference there, you cannot really pinpoint anything as being that for out of line. They seem to be quite consistent.

Mr. **Molinari.** It appears that EPA is not doing the job here. I guess we can also say that the States are not doing the job equally as well.

Mr. **Wessinger.** The States use the same reason EPA uses, that they do not have enough resources either.

Mr. **Molinari.** So, it comes down to the question of resources.

Mr. **Wessinger.** Yes.

Mr. **Molinari.** The key element here seems to be resources and some of us on this subcommittee have been screaming about the cut-backs because we foresaw that things like this would occur.

Do you have any ideas or recommendations, as to what allocation of resources should be made by Congress so that EPA can perform as it should, so that we do not have to go through this exercise again 3 or 4 years from now and find the very same results.

Mr. **Wessinger.** No, we did not make that type of analysis and that would be quite an intensive thing. As a matter of fact, that is why we recommended to the Administrator that he make that type of analysis and report to the Congress. We felt that he would be in a much better position to do that.

Now, once he has done that, we perhaps could critique what he has done, if he develops enough detail for us to look at it.

Mr. **Madonia**. If I might add, we tried to classify the problems we identified and our suggestions for improvements into two categories. There are some things that would be resource intensive and it would require additional resources, for example, major increases or improvements in enforcement action would take additional resources.

However, we do make some suggestions that we think could be done without additional resources, or without large increases in resources such as paying more attention to discharge monitoring reports that are not submitted by dischargers; or following up on incomplete reports that are sent in by dischargers.

Also, improving the quality of information obtained from laboratories that analyze the samples. So, there are a number of things that can be done without large increases in resources.

Mr. **Molinari**. I understand that, but the main task is to reach the goals that were set forth in the Clean Water Act, and I think we are all in agreement that they cannot do that with the present level of resources at EPA.

Now, before we leave that, what would it take on the part of GAO independently to make that assessment? You mentioned that it would take a rather intensive amount of work. How intensive? How much resources would it take?

Mr. **Madonia**. That is a very difficult thing to do and in the past we have attempted to determine, based on discussions with the knowledgeable people at the Federal and State level what additional resources would be necessary and, if so, what types of activities they would use them for; or, if resources would remain the same or be reduced, what activities would suffer.

We have been able, in the past, to get some type of feel for what areas would require additional resources and in some cases the dollar resources that EPA regional officials and state officials think are necessary.

But occasionally that is a matter of conjecture on the part of people and it is very difficult to substantiate precisely how much additional resources would be necessary.

Mr. **Molinari**. Mr. Wessinger, do you have something to add?

Mr. **Wessinger**. I was just going to add one other thing to that. Quite often, GAO does not like to get into that position of coming up with a budget estimate for another agency because then that puts us in the role of having to defend that estimate before the Congress. Really, that is the thing that the executive branch should be doing before the Congress.

Mr. **Molinari**. I understand. Thank you. I have other questions but in deference to my colleagues on the committee, I will pass for a moment.

Mr. **Oberstar** [presiding]. Mr. Wessinger, this report I find very fascinating, another of a long series of very thorough and comprehensive analyses of the program and the problems in operating this massive program that GAO has inquired into over a period of several years.

Back in 1980-81, our committee did some inquiries into the operation, functioning, of this program and at the subcommittee's request GAO undertook a survey of some 242 facilities in 10 States, and found 211 to be in violation at one time and to certain and varying extents.

Of that number, 66 were found to be in serious violation and the statistics show that 73 percent of plants surveyed were in compliance with their permit requirements to only a minor extent, requiring considerable cleanup.

We go back and find out why. The principal causes of plant performance problems, five general categories, overload, design deficiencies, overload resulting from infiltration and inflow, poor operation, and poor maintenance practices.

Now let us look 3 years, almost 4 years, later. The most prevalent causes of noncompliance are operation and maintenance deficiencies, equipment deficiencies, treatment plant overload.

What have we learned and what has happened with what we have learned in these 3 or 4 years, and who is to blame? How do we correct it?

Mr. **Wessinger**. Well, I think this gets at the same question that Mr. Levitas asked a little earlier about what do we do about it. It seems like time and time again we have to come back to the resources that you put in there, and whether you are really serious about enforcing these permits that are out there.

One has to wonder, after so many years, how serious are we enforcing this? I guess it is somewhat comparable to, maybe, in enforcing the 55-mile-an-hour speed limit. Sometimes you get out on the beltway and other places and you have to wonder how serious are we about that sometimes?

I think all these things that come into enforcement, it depends a lot on how much are we willing to pay to enforce the law.

Mr. **Oberstar**. Has there been a failure on the part of the EPA to deal vigorously with the States and through the States with the local treatment facilities?

Mr. **Van Blarcom**. Well, I think the municipals probably provide the best example. In the six States that we went to and the three EPA regional offices that we went to, there is no doubt that the unwritten policy of not enforcing against municipals once they have applied for Federal funds—even though they may not get Federal funds for upgrading for a number of years—there is no doubt that that contributed to a continued high noncompliance rate on the part of municipals, especially those that are awaiting funds.

For those plants that have upgraded, I do not think there is any doubt that the national pretreatment program that is still being debated and has not been implemented, is impacting on the ability of municipal plants to meet their permanent limits.

I think one of the States that we went to, New Jersey, indicated that those types of industrial inputs are probably the major reason for municipal noncompliance in their States.

I guess EPA has taken a couple of steps in the right direction with respect to municipal plants, and that is based on the Clean Water Act Amendments of 1981. The owner-operators of municipal plants will have to certify at the end of 12 months that their plant actually can meet the treatment standards that are included in their permit.

Of course, the number of treatment plants covered by those provisions so far is very small.

Mr. OBERSTAR. In your report you say, on page 4, that "Municipal dischargers were in significant noncompliance more often than industrial dischargers by better than a 2-to-1 ratio".

Somebody is letting the municipals off the hook simply because they are cities, they are public bodies, public entities and maybe they are complaining that they do not have enough money to staff or adequately to operate those facilities. But whatever it is, there is something wrong there.

Mr. VAN BLARCOM. I agree, I agree. The factors that I mentioned that have contributed to municipal noncompliance, especially this lack of Federal funds to upgrade a plant that needs upgrading, hopefully will be countered by EPA's current policy to require compliance with the July 1988 deadline for secondary treatment regardless of the availability of Federal funds.

I guess as far as the municipals are concerned, we have to go back to the 1972 act which set July 1, 1977, as the deadline for secondary treatment. That deadline was subsequently changed to 1983 and now for some plants that deadline has been extended to 1988.

Mr. OBERSTAR. Do you find in connection with those deadline changes that a mind-set has taken hold among the operators of municipal facilities, among those who are leaders at the municipal level, that Congress first set an unrealistic deadline; then changed it, and now can be persuaded to change it once again, and that therefore we can drift along and not have to work hard to be in compliance.

Mr. WESSINGER. Well, we certainly do not have any concrete data to support that. But I think it is fair to suspect seeing these deadlines moved, that that would be the attitude of a lot of people by this time.

But certainly, I cannot sit here and tell you that anyone has ever told me that.

Mr. OBERSTAR. You cannot document it, but you sense that that may be the underlying problem.

Mr. WESSINGER. Exactly.

Mr. OBERSTAR. My final question: Did you find any success stories, facilities that are operating above the permit and beyond their compliance requirements?

Mr. WESSINGER. I am sorry we do not have any report like that.

Mr. OBERSTAR. No overachievers.

Mr. WESSINGER. None that we know of.

Mr. OBERSTAR. The gentleman from Texas.

Mr. ANDREWS. Thank you.

I would like to follow up on something that Chairman Levitas touched on and you all talked about, and that is the attitude of prosecution and this confrontation versus working out some of these cases.

I must tell you that this whole issue really troubles me because I do not see it as one of, we do not have enough funding to have an aggressive attitude about enforcing the law. That kind of response is just not very satisfactory to me and I do not want to appear to oversimplify what are extremely expensive, complicated law suits and litigation procedures.

But it is curious to me that you have found in the late 1970's an aggressive prosecution, apparently, and then suddenly in 1982 you go look and see a marked difference.

I am curious how we get a handle on attitude and policy toward people that are not meeting appropriate requirements. Could any of you comment on what you think the most significant reason has been that in the late 1970's we had evidently a pretty positive policy of being aggressive and then suddenly we revert back to not a very good enforcement policy.

What would you all say would be the most significant thing that is the difference there?

Mr. MADONIA. Well, I think it is a combination of factors and simply the lack of resources certainly is a major factor. EPA has to prioritize its violators in terms of which will deserve enforcement action first.

But admittedly, there has been a change in philosophy, in enforcement philosophy, over the years within EPA, and unless there is some consistent pattern and a consistent philosophy of enforcement, the lack of enforcement and inconsistent enforcement, and long delays in enforcement will continue to occur.

Mr. ANDREWS. Let me just go over these memos that are very troublesome to me. Here is a January 1982 memo that says you should first talk about settling cases in a nonconfrontational manner and then in July 1982 we see a memo that says, use strong, aggressive, and fair enforcement. That sounds pretty good to me.

Why the inconsistency? How do we get a handle on this policy, and how should we as a committee be viewing these kinds of policies? What do we need to do to try to change the direction and avoid this apparent inconsistency of procedure?

Mr. VAN BLARCOM. Well, as I mentioned before, the reason for the confusion in 1982 at EPA was primarily the fact that the enforcement leadership in the Agency was changing at the time, and the initial new enforcement management strategy underwent modifications during the course of the year.

I think one of the overall problems, that we identified, in each of the six States that we have gone to, there is a very, very large amount of discretion on the part of EPA regional office people and State people as to what particular violations will be subject to an enforcement action and what type of enforcement action they will be subject to.

If, like in most cases, attempts at voluntary compliance are undertaken, it normally extends over a period of months before someone decides that maybe this voluntary approach is not going to be successful and some decision is made as far as going into formal enforcement action.

We recommended at one time to EPA that as far as enforcement actions are concerned, there should be specific time frames by which, if voluntary measures are not successful in bringing about compliance with permanent limits, that you automatically go into a formal mode, attempting a fine or some other civil penalty.

In EPA's comments on our report they indicated that the new enforcement strategy that has just recently come out, while it will not identify specific timeframes for going from informal to formal enforcement action, it will try to attempt to see that significant noncompliance is returned to compliance at least during the course of 1 fiscal year.

Mr. **Andrews**. I think that is an excellent idea. You mentioned earlier that there may have been a situation at the EPA where they were trying to increase their cases of prosecution. Was that your point in the change? You said in December one reason was just to have more prosecutions going on.

Mr. **Van Blarcom**. Well, I think we mentioned that that seemed to be a reaction to the late 1982 change in policy, and that is to bring in more enforcement cases.

Mr. **Andrews**. But it is really where we need to be is some kind of consistency of prosecution. I can remember being a young DA and always at the end of the month we always looked at our records in the county court to see how many shopliftings and DWI convictions we had.

If we were behind, well, everybody tried to plead out as many as they could before the end of the month so our records would look great and our judge would look like a tough judge to the general public—a terrible statement on prosecution but that is the way many county courthouses worked around the country.

What a terrible situation for EPA to be in where they find themselves dragging out these prosecutions for months, and months, and months with no timetable. I think that is a terrific idea. And then suddenly, my gosh, we have to show something to the public, let us speed up every case we can speed up because then, I think, you reach another problem, a whole other issue and that is quality of prosecution. You lose your prosecutorial discretion when you start doing that, any kind of leeway to do the right thing.

This is an issue that faced our subcommittee since we started these hearings in January and this report, I think, just underlines the real problem we have to get to in trying to have an EPA that consistently is aggressive in enforcing these regulations.

Thank you, Mr. Chairman.

Mr. **Oberstar**. Thank you. The Chair recognizes the gentleman from Florida, Mr. Shaw.

Mr. **Shaw**. I have no questions at this time.

Mr. **Oberstar**. The gentlelady from Connecticut.

Mrs. **Johnson**. Thank you very much.

I understand that you have touched on this subject earlier and I really deeply regret that I was not able to be here from the beginning. I will review the transcript carefully because this interests me very greatly and in the gut, as you will soon see.

I understand that you see no difference in the level of compliance in those States where EPA is the enforcer and those States where there is State enforcement. Is that correct?

Mr. **Wessinger**. Basically, that is what we said.

Mrs. **Johnson**. I found it absolutely astounding and I would be interested in pursuing this with you at another time. I come from a State that has a very strong enforcement policy. My business people who are complying are being underbid by 25 percent from the noncompliers in the surrounding States where there is only an EPA program.

I see a dramatic difference between our State where there is a strong State compliance program and surrounding States where there is a Federal program.

I think one of the things that we are going to have to do is require acceptance of this responsibility so that we can devote our resources to monitoring 50 rather than monitoring millions.

I would just like your comment on that, and I wonder, to what do you attribute the fact? Do you think that your work was exhaustive enough to be honestly able to draw that conclusion, or what do you think needs to be done in order to evaluate whether that is indeed the case or not the case?

Mr. WESSINGER. Well, I should qualify and say that when I made that comment, we were looking at just the six States that we went into. I cannot project this across the Nation.

Now, the six States that we looked into and the sample that we drew on, we did not see that dramatic a difference between the EPA enforcement versus the State.

Mrs. JOHNSON. Excuse me, which are the two EPA permitting States?

Mr. WESSINGER. The four, the two EPA States are Texas and Louisiana.

Mrs. JOHNSON. And all the others are State-run programs?

Mr. WESSINGER. Yes.

Mrs. JOHNSON. Did you see any variation among the States with State-run programs?

Mr. VAN BLARCOM. I guess I would have to say, our approach to the overall review was to take a look at the NPDES permit program under the Clean Water Act.

The primary thrust of our work was to look at controls that were supposed to be present at various points of the program and to identify whether they were or whether they were not, and why were they not.

I would have to say that a great amount of our time was not spent in trying to identify differences between EPA-run and State-run programs or especially trying to identify differences between the various State-run programs that we looked at.

Mr. OBERSTAR. Would my colleague yield at that point?

Mrs. JOHNSON. Yes.

Mr. OBERSTAR. This goes to the heart of one of the basic concepts of the 1972 Water Pollution Control Act because in that legislation Congress intended that we have a national uniform system. That is why we moved away from stream standards, how much pollution load a stream or a body of receiving waters could accept in the form of pollutants, to discharge standards that would be uniform and without regard to the quality of the receiving waters.

Now what is happening is that each State seems to be deciding what they want to do, whether they want to be tough or weak in enforcing this act.

This lack of uniformity also has economic consequences. It has competitive effects among the various States. Now, we have to have a national minimum cleanup standard required of everyone equally across the board so that there will not be an advantage for an industry to locate either in Connecticut or in Georgia, or in Minnesota with respect to pollution and its discharge into receiving waters.

Unless this law is being enforced uniformly across the board, we are defeating the very intent of the national minimum cleanup standard.

I thank the gentlelady for yielding.

Mrs. **Johnson**. Yes, and I would question whether a sample of 531 in six States is a sufficient sample to draw the conclusion that States with State programs are not better enforcers. What we are talking about in terms of enforcers—and this comes more from my State experience than from my Federal experience—is that if there is a problem and right now six of our companies are being sued for noncompliance with their permit but because of minor abrogations, relatively speaking. The more important problem is how many firms are out there that are not permitted at all.

What I am saying is, I do not accept your statement, your evidence pertaining to this issue of State versus non-State enforcement programs because it seems to me too small a sample and too narrow in its focus.

Mr. **Madonia**. You have valid concerns and our results were not intended to be indicative of the Nation as a whole. We looked at six States and we took a random sample of the permittees within those six States.

You are entirely correct. Perhaps if we looked nationwide and did an analysis to specifically compare State delegated programs with EPA run programs, there may be a difference.

In the water program, we have not attempted to look specifically at the delegation issue and to make that type of comparison. We are doing that type of thing in other areas, for example, in the air area. We have not, to this point, done that in the water area.

Mrs. **Johnson**. And what has been your determination in the air area?

Mr. **Madonia**. Well, we do have an effort underway to look at delegation under the Air Act, and we are looking at some States where the prevention of significant deterioration elements of the Air Act have been delegated to certain States for a long period of time, where it has recently been delegated, and also States where EPA retains the authority for issuing permits and other activities.

We are just beginning that effort, but it is an attempt to recognize the concern that you have that there may be some differences, particularly with the recent emphasis on delegation of environmental programs to the States.

Hopefully, that type of analysis will show, or may show, differences in the efforts being undertaken by delegated States versus EPA.

Mr. **Shaw**. Would the gentlelady yield on that point?

Mrs. **Johnson**. Yes.

Mr. **Shaw**. In trying to reach comparisons, though, are you not going to find comparative State laws that are going to make your analysis inconsistent? That is, it may not be a question of just enforcement but State laws.

I know in Florida we are running into problems where we find that maybe the fact that we only have an automobile inspection situation that is going to create some real problems, which does not necessarily reflect upon the enforcement in our State, but it would reflect upon the emissions from automobiles.

I do not know how you are going to be able to make comparisons if you are looking at it from the standpoint of enforcement alone.

Mr. MADONIA. You are absolutely right, and our very first step is to develop some criteria for measuring effectiveness. There are variations in the programs. There are variations in the amount of resources that EPA and the States devote to the different programs, and it will be a difficult comparison to do.

But we think something of that nature should be attempted.

Mrs. JOHNSON. It may also be that you can identfy those State laws that seem to make the difference between an effective and an ineffective program. That would be worth doing.

Mr. MADONIA. Yes.

Mrs. JOHNSON. I thank you for your comments in this matter. It is, I think, very relevant to our discussions.

Mr. OBERSTAR. One question before I turn to the gentleman from West Virginia. In the recommendations from our committee of its inquiry in 1981, one of the very significant, we thought, tough recommendations was that no grantee should receive more than 80 percent of the total Federal share of the project cost until the project has actually been in service and in substantial compliance for 12 consecutive months.

To the best of your knowledge, has that requirement been met; has that been implemented by EPA?

Mr. VAN BLARCOM. I guess I can only make two comments. No. 1, of course, is the relatively recent change in EPA policy that will require a municipal plant operator to certify that his plant meets permit limits on a consistent basis at the end of a 1-year period.

Here again, I do not think there is any provision for holding back funding.

The second recent change in EPA's strategy is also to require from municipal plants by July 1985, municipal plants that are not complying with their permit limits, to submit a plan whereby they will describe how they plan to come into compliance and by what specific date.

Here again, no mention of withholding of a percentage of construction grant funding until that is accomplished.

Mr. OBERSTAR. Thank you. The Chair calls on the gentleman from West Virginia, Mr. Wise.

Mr. WISE. Thank you, Mr. Chairman.

I guess my first question deals—I do not know whether it is in your report—but the question of attitude, speaking of the delegation of enforcement between the State and EPA, designation of enforcement actually.

My experience with EPA in my State, West Virginia, has been that they, once they have made that designation, then say, well, it is the State's ball game. They are the ones that are the enforcers; they are the ones who handle the Construction Grants Program.

However, our State takes the position often, when you call them, that, well, we may be designated but EPA really is the responsible party. The result is that you get only a cursory review by both agencies, either both in the Construction Grants Program which of course is designed to make sure that we do reduce these limits of pollution and then later in enforcement.

I just wondered if you have any question on, or any thoughts on that. You said that in the States that you surveyed—of which mine was not one—but the States that you surveyed you did not find any difference in the real enforcement between the two States, or between the two levels.

But do you also have any thoughts on—is anybody a tiger there? Who is pushing whom?

I did not get any answer.

Mr. WESSINGER. That is a tough one.

Mr. WISE. I am asking you more subjective than objective. Well, let me go a little further. The chairman of this subcommittee and his staff have been very helpful to me in some of the problems we are having, and I appreciate it greatly.

But the problem we are having is, yes, we have a goal to clean up the rivers and streams. EPA pours millions of dollars to do that into sewer projects, 75-percent funding.

Then, when problems come up and those goals are not being met, they do one of two things. They either get heavy-handed, it is time for enforcement, or nothing.

So, you are left with a project in which millions of Federal dollars have been poured. It is not meeting the requirements, the objectives for which it was constructed, and nobody does anything about it. EPA says, "Well, it is not our responsibility. We fulfilled our obligation, we gave money, they cannot do it."

The State says, "Well, it is EPA's responsibility." The one thing I am concerned about with EPA policy is certifying—the operator certifying—that it is meeting permit requirements. So, is that just a means of putting everything on the person who is least able to pay for it and least able to pay for the job and the oversight job that should have been done earlier?

Mr. MADONIA. Well, I think, Congressman, we share your concern. Even in States that have been delegated the program, the Permit Program and other areas, the Construction Grant Program, I think our reports over the years have pointed out our feeling and our philosophy that EPA still needs to maintain an active oversight role.

Officially and technically, the program is delegated to the States for approving the construction grant and various other elements of the program.

But we have felt that there needs to be a strong oversight effort by EPA. As was mentioned earlier, in the case of enforcement, EPA does have the discretion to issue a notice of violation to permittees in States that have been delegated the program to indicate, to show EPA's feeling that the State may not have been taking adequate enforcement efforts.

We do not have any particular insight based on this review as to whether there are any "tigers" out there. I think the statistics, the compliance statistics or the noncompliance statistics and the enforcement efforts show that we did not see any strong contenders.

Mr. WISE. Tigers reduced to tabby cats.

The second question I have is one dealing with your experience, I guess. Let us say that I am the operator of a plant that is not in compliance. I want to do something about it. A lot of the problem is design or construction deficiency. I signed off a year ago. The EPA, I guess, is telling me now it is my ball game.

To your knowledge, have any of these folks ever been successful in private litigation to recover the enormous sums that would be necessary to put that plant in compliance? I mean, I am talking millions of dollars in some cases. Is that a viable means? Has it gotten results in the past?

Mr. **Madonia**. Well, as our prior reports have pointed out, there is a great deal of difficulty in even agreeing on what the cause of the problem is, let alone taking action to recover the costs of repairing the facility or bringing up the standards.

I guess there may be some success stories out there but generally we find that it is the grantee, the community, especially small grantees that have difficulty in placing the responsibility for the problem and then obtaining funds from the responsible party.

In many cases, they come back to EPA for additional funds.

Mr. **Wise**. But then, when EPA takes the position that, "We have done everything we can under our regs and our law and you now have the right to private litigation," that is a right without a real remedy. I mean, yes, anyone can pursue private litigation but in fact it is probably not going to be successful.

Mr. **Madonia**. That is correct, and I think we have recognized in the past that we do not think EPA's responsibility stops there. We think EPA should still be providing some oversight and some technical assistance to grantees to help them through that process.

Mr. **Wise**. Thank you. In your experience in your surveys, have you see instances where EPA is providing that technical assistance? They are authorized to do it.

Mr. **Madonia**. I cannot recall any instances off hand. I think our conclusion was that that type of technical assistance was very limited.

Mr. **Wise**. And to partly answer that question, at least as regards region 3, we cannot recall any either because there have not been any.

Mrs. **Johnson**. Will the gentleman yield?

Mr. **Wise**. I will be happy to.

Mrs. **Johnson**. This is to me one of the dramatic differences in a State program. In our State program we do actually have people who are specifically funded for technical assistance. I just cannot imagine that the bottom line effect out there is not quite different if you look at the total number involved. That difference between the initial stage and actually implementation is deeply affected by oversight and technical assistance.

Mr. **White**. I still get the feeling that once you build one of these things, even if it does not work, you are on your own and now you are in violation of NPDES permits, everyone comes screaming on you and the only folks that can help you say, "Sorry, we have done ours" and in the meanwhile millions of Federal dollars are going down the tube.

Thank you very much.

Mr. **Oberstar**. The gentleman from Tennessee, Mr. Sundquist.

Mr. **Sundquist**. No questions, Mr. Chairman.

Mr. **Oberstar**. Mr. Chairman?

Mr. LEVITAS [presiding]. Thank you, Mr. Oberstar.

Let me turn to another subject along the lines of the permits and the need to issue new permits for those that have expired, and pending permits.

In your testimony this morning on page 9 you make the point that one of the important significances of the reissued permit is that if these permits were rewritten, it is likely that many would contain stricter pollution limits especially since the permits that have expired were written to control conventional pollutants and did not always require control of toxic pollutants.

Now, I understand that and it is a very important point. In fact, it is one of the most troubling things about this whole situation, and I accept your statement, I think you are absolutely correct.

My question is, if about 20,000 dischargers are not living up to their present permits, what do you think they would do about even stricter permits? I mean, would it really mean anything if they are not complying with what they are already doing, which is less strict, why would you believe it would accomplish anything by having even stricter permits?

Mr. MADONIA. I think that it is a fair conclusion, Mr. Chairman, that if stricter permits were issued, the municipalities and industrial facilities would have greater difficulty meeting those limits.

The second-round permits—and this is agreed by EPA and State officials—the second-round permits most likely would have more stringent limits in two respects:

In terms of additional pollutants that are not now currently in the permits, such as additional toxic pollutants, and more stringent limits on parameters that are in the permits now, existing conventional limits.

If permittees are not meeting the less strict limits, they undoubtedly would have difficulty in meeting the stricter limits.

Mr. LEVITAS. That is a very good observation, Mr. Madonia. You know, as Mr. Andrews pointed out in his former capacity as prosecutor, how they used to check on the paper work what the figures were going to show, and I know EPA and other agencies of Government play that same type of game.

My guess is that if all of these permits were issued, reissued and the stricter limits were put in, 3 years from today you would come back with the same report except the numbers would be worse than they are right now.

There would be more plants out of compliance and more plants significantly out of compliance than they are today.

Mr. MADONIA. I believe that is a fair statement, assuming that the low level of enforcement on the part of EPA and the States remain the same. I guess you could assume if enforcement efforts were stepped up, that perhaps might bring additional permittees into compliance.

Mr. LEVITAS. All right, now, we in our last report touched on a number of things that could be done to improve the situation, infiltration and inflow improvements; design accountability and so forth.

But the operation and maintenance appears once again in your report to be a significant factor in the noncompliance, in what leads to noncompliance, and that is a responsibility of the wastewater treatment plant operator.

I recall in one of our earlier hearings someone had talked about the tremendous investment we have in these wastewater treatment plants and then turn them over to the municipalities and they are beginning to operate them. He equated it to a person who went out and bought the most expensive high-performance, high-tuned car that was possibly available and then engaged the village idiot as his chauffeur and said, "You know, you cannot operate these plants which are very sophisticated, which have very sensitive balances with the ph and the microbes and things of that sort in there, and expect it to be operated by people who are not trained, who do not have the proper background."

Now, is it possible that we could place some more stringent requirements on the local communities that might be self-executing to a certain extent, to require them to provide operation and maintenance of appropriate quality so that you do not have to go through some elaborate enforcement policy, that it would be self-executing.

My recollection is that there is something in the law already about that, but it is never enforced, that a municipality which is not in compliance is not eligible for further grants until they get into compliance. It is a Federal regulation. Maybe we could make that a little bit tougher.

Have you given any consideration to that?

Mr. WESSINGER. No, we have not. One observation I would like to make on your comments—and I think you are entirely right. I think it is probably more prevalent in the smaller communities.

I think I understand what you are saying. Once you have these highly sophisticated plants in place, you need to have the right kind of capability on the staff to operate these plants. That is where you tend quite often to get into another resource problem because to hire those types of people, you are going to have to pay them a fairly high salary.

Mr. LEVITAS. Well, it is a terribly serious problem. You know, one thing this does, we get into a self-defeating cycle. People read reports of the sort that you have this time; that we issued in 1981; that you issued in 1980. Members of Congress and the public say, are we really just throwing money down a rat hole?

That undercuts support for the program itself. Maybe we ought to begin to put more of the construction grants money into enforcement against those who are the recipients of these permits and let you come back with a report in another year that shows something has been accomplished, and maybe we will then get some more public support and congressional support for the grants program.

But as one who is a strong believer in and supporter of the Construction Grants Program, I look at a report like this and understand its implications. And what I am concluding is that the billions of dollars we have invested in these plants, while they have achieved something, have not achieved what we were supposed to be getting from them.

Mr. WESSINGER. I think that is exactly right, we are just not getting a good return on our money, on our investment.

Mr. **Levitas**. Thank you. I will be glad to yield to the gentlewoman.

Mrs. **Johnson**. This brings me back to a point of considerable concern. Apparently, GAO did a report in 1978. Now, I have not read that report in detail, but in the digest it says that about 55 percent of the 165 permittees failed to comply with one or more discharge limits during a 15-month period.

Now, that does not sound unlike the situation now. What recommendations were made as a result of that report and have you looked at whether those recommendations have been implemented?

Did Congress do anything in response? Did you consider in the course of your study whether or not the recommendations have been effective in improving the situation?

Mr. **Madonia**. I think that 1978 report does indicate that the levels of noncompliance have been consistent and long running. While the 55 percent is not entirely comparable to our current statistics simply because we looked at a number of different States and our timeframe was not precisely the same, it does indicate continued long-term noncompliance.

We did point out in our 1978 report some of the very same problems that we are pointing out in our 1983 report, for example, the need for more attention to sampling inspections where EPA and the States actually verify the contents of the discharge by the permittee.

We also pointed out that we felt at that time EPA needed authority to assess administrative penalties which we are also pointing out in this report.

So, there are a number of problems that we pointed out and a number of suggestions that we made in 1978 which have not adequately been addressed to this point.

Mrs. **Johnson**. Have any of the recommendations made in 1978 been implemented?

Mr. **Madonia**. As a general statement, I can think of three major recommendations that were made, and they are the two that I mentioned on increased attention to sampling and the administrative authority to assess penalties. Another area that we pointed out was that we thought more attention should be given to the cumulative impact of minor dischargers. As we have mentioned, there is very little attention given to minors simply because of a lack of resources and priorities.

We pointed out at that time that there may be some significant adverse effect on receiving waters perhaps not from individual minors but from cumulative impact of minors. We made a recommendation that more attention should be given to those. That has not been done.

So, in general I would say that the major recommendations that we made have not been addressed.

Mrs. **Johnson**. Thank you. I yield back to the gentleman.

Mr. **Levitas**. Thank you. Mr. Molinari?

Mr. **Molinari**. Was there any assessment made as to the cumulative impact of the minor dischargers?

Mr. **Madonia**. There was no attempt being made at that time. We felt that there should be some attempt to look at the cumulative impact of minors.

Mr. MOLINARI. By the way, what is the difference between a major and minor discharger? Is there a definition? I assume that is EPA's definition.

Mr. VAN BLARCOM. Yes, it is EPA's definition. I guess in one of our earlier reports we recommended that they make the distinction because they had not.

Currently, EPA considers a municipal to be a major discharger if the facility serves 10,000 people or has a flow of one million gallons a day.

With respect to industrial dischargers, EPA developed a scoring system based on the amount of flow treated, types of pollutants, especially toxics; and, the receiving waters that the discharge is made into, especially whether the source is used as a source of drinking water. Any industrial discharger that gets a score of 80 or more, is classified as a major.

Mr. MOLINARI. Do you have any problem with their criteria used in that definition?

Mr. VAN BLARCOM. I do not think there is any problem with the criteria. I mean, the criteria is very valid. The use of the 80-point cutoff as the difference between a major and a minor is a judgment on the part of the agency. We have no real reason to question it.

Mr. MOLINARI. Just one or two more questions. With respect to reviewing EPA's enforcement policies, did you encounter any problems in identifying or locating information obtained in a discharge monitoring report?

Mr. VAN BLARCOM. Well, I would have to say that the way things stand right now, the job is very time consuming. Of the six States that we covered the discharge monitoring reports for only one of those States had been computerized.

So, in compiling the data that we had to compile on noncompliance required going through 18 months of records for each of the 531 dischargers that were covered. So, the records were available, with the exception of the ones we identified as incomplete or missing. But it is a time-consuming process to do things like this because most of the work was not automated.

Mr. MOLINARI. Which State was computerized?

Mr. VAN BLARCOM. Well, at the time we did the review, EPA Region 2 had the State of New Jersey's DMR data computerized because they were still managing the program in New Jersey.

Mrs. JOHNSON. Will the gentleman yield?

Mr. MOLINARI. Yes, sure, I will be glad to yield.

Mrs. JOHNSON. Just to clarify that point, the one State that computerized did not computerize at State expense but was federally computerized.

Mr. VAN BLARCOM. Yes.

Mrs. JOHNSON. Are your recommendations at all going to deal with another possible avenue of Federal promotion of better compliance work by providing money to computerized record keeping? It seems to me the States would be in a much better position to monitor if they had better technical capabilities.

Mr. VAN BLARCOM. Well, the States of course already receive grants under section 106 of the Clean Water Act to administer their water quality control programs. I would assume that some of those moneys could be used for computerization of records like discharge monitoring reports.

Mrs. Johnson. I guess then one of the things we ought to think about is whether or not we should set priorities in the expenditure of that money and somehow front the cost of technological change.

Thank you.

Mr. **Molinari.** We spoke before of EPA's ability to intervene where they have delegated authority to issue permits to the States. Do we have any examples as in the New York study where, in fact, they intervened because there was a failure on the part of the State to perform?

Did you run into any instances of that?

Mr. **Van Blarcom.** Frankly, I think we came across only one example, in the State of New York where EPA planned on filing a notice of violation.

And I'm not perfectly sure as to whether or not they ever filed it.

Mr. **Molinari.** OK.

One last question, and it may not be one you can answer.

Is there any way, based on the extensive report that you have conducted, where you can tell us, in your judgment, how the water quality has been impacted by problems with the permit program?

That is the $64 question. I know it is a difficult one that we have to wrestle with; but if there is any way you can give us some estimation as to how water quality has suffered as a result of nonperformance and failure to comply, it would be most helpful to us.

Mr. **Madonia.** Well, I think it is a fair conclusion that one major element of the water pollution program is not working to expectation: the NPDES permit program certainly has not achieved a level of compliance and the strong enforcement efforts that were envisioned.

What impact that deficiency is having on achieving the goals of the Clean Water Act is difficult to determine; basically, because there are a number of other major factors such as controlling nonpoint sources of pollution, runoff, and other types of discharges.

However, I guess it is fair to say that since there is such a high level of noncompliance by municipal and industrial permitees that two things are evident: we are certainly not getting the return on the investment of the Federal dollar; and, second, since these permit limitations were issued based on water quality standards and various other considerations intending to achieve the clean water goals, the fact that there is such a high level of noncompliance indicates that we are not achieving, or that we are somewhat less than achieving the clean water objectives that we intended.

There is more pollution being discharged than the permit limits anticipated. And that is having some effect on our achieving the goals. Precisely what effect, however, is very difficult to determine.

Mr. **Wessinger.** Yes. I was going to say, that is one side of it.

But I think we are always going to have to look at the other side of it, that is, the mere fact that there are plants out there operating, and maybe they are not operating up to the permit limit that we would like for them; the water that is being dumped probably is cleaner than if you had no plant at all.

So I think there has to be some impact there. But measuring that impact is a most difficult thing.

Mr. MOLINARI. Mr. Chairman, I think we need to ensure that the results of the study find their way into some better enforcement techniques.

Thank you all for a very, very good presentation.

Mr. LEVITAS. Thank you.

Let me just follow up on Mr. Molinari's fine question:

We have not, nor does your report, question at this point the validity of the permit system, the NPDES Program. That concept was established as part of the Clean Water Act as the most effective proxy for measuring improvement.

Or, to state it another way, unless you were able to accomplish stream-testing for stream quality, the only way to determine whether you were cleaning up the waters, based on the prior effluent, was through the permit system.

Hence, accepting for the time being the validity of the permit and the permit system, if we come up with 25 percent of all discharges in significant noncompliance with that permit, then the proxy is telling you that you are not getting the water as clean as it is supposed to be.

I think that is sort of a syllogistic argument. That is the essence of the permit system of the Clean Water Act.

It clearly is telling us that we are electing a program in which billions of taxpayer dollars have been squandered.

Now, the point that Mr. Wessinger made at the end is that we are getting something from it. But, you know, a few years ago the Congress in passing what we called the Counter-cyclical Economic Antirecession Program, the formulas were so flawed that we were dealing with, I remember observing that we would save money, forgetting the formulas, and just flying a 747 over the United States and tossing the money out the windows, because somebody could pick it up and spend it; which is what we were trying to do anyhow.

Now, that may not be a very sound way of approaching the problem of the distribution of Federal tax dollars. By the same token, the fact that we are getting some benefit because we are spending some billions of dollars is no justification, it seems to me, for the program because it is not doing what we are paying for. It is doing something but it is not doing what we are paying for.

Mr. WESSINGER. It is not a good return on our investment.

Mr. LEVITAS. That is my point; right.

And, as Mr. Molinari pointed out in addition to its not being a good return on investment, we are also seeing the waters of this Nation not as clean as they should be; because we are not getting the performance.

And I think that is why we are here today.

Now, tomorrow, we are going to be meeting here at ten o'clock; and we are going to be meeting in room 2253 of the Rayburn Building at 10 o'clock.

We are going to hear from the EPA tomorrow. And the key witness, the chief witness, tomorrow is a very able and fine gentleman, Mr. Jack Ravan, who sits as Administrator for Water. And I know he is very good. He is a capable, competent gentleman.

And he is certainly capable of saying: this did not happen on my watch, you know; but he is not going to say that, I am sure.

But the point is, that my patience is at an end. Here we have heard it again and again and again; and I am still groping for: who is going to do something? Who is going to do something?

We keep getting all the conversation, but none of the action.

And we ought to bring in that woman who says, "Where is the beef?"—where is the beef? Where is the performance? I see the bun, but I do not see the beef. [Laughter]

And so maybe tomorrow Mr. Ravan can answer the question: where is the beef?

If there are no further questions from the Committee, let me express my appreciation, Mr. Wessinger, to you and to your colleagues and associates. I think you have set the stage for a very important set of hearings that we are going to have.

And I am prepared to say at this time from my point of view, I want to see some results.

Thank you very much.

The subcommittee stands in recess subject to the call of the Chair.

[Whereupon, at 12:10 p.m., the hearing was recessed.]

IMPLEMENTATION OF THE FEDERAL CLEAN WATER ACT

(EPA Enforcement of the National Pollution Discharge Elimination System Permit Program)

THURSDAY, MARCH 8, 1984

House of Representatives,
Subcommittee on Investigations and Oversight,
Committee on Public Works and Transportation,
Washington, DC.

The subcommittee met, pursuant to recess, at 10:19 a.m., in room 2253, Rayburn House Office Building, Hon. Elliott H. Levitas (chairman of the subcommittee) presiding.

Mr. Levitas. The subcommittee will please come to order.

Today we begin the second day of hearings in our oversight investigation into the implementation of the Federal Water Pollution Control Act, EPA's enforcement of industrial municipal wastewater discharge permits.

Yesterday we had a very interesting session with the witnesses from the General Accounting Office, repeating a story we have heard frequently, unfortunately. According to their testimony, 82 percent of the permits they sampled were not in compliance, and 31 percent of those, or approximately 20,000 permits, were in significant noncompliance.

This means that not only are we not receiving the value which the public has invested in the wastewater treatment plants, but that the water quality is therefore degraded beyond what it should be, since the permit is really the heart and soul of the system.

To make matters worse, this is at least the third occasion on which we have heard the same story, and one of the most interesting observations yesterday is when the new permits are issued—and there is a backlog of those—they are going to be more stringent, dealing with not just conventional pollutants but toxics, as well, and the likelihood is there will be even worse noncompliance because the permittees cannot live up to the permit requirements they now have. It is, therefore, not expected they could meet the even more stringent requirements and reissue permits.

According to the General Accounting Office, a number of things contribute to EPA's failure to enforce these permits. The two most significant ones, according to them—and I might add up front, I agree—is, one, a lack of will on the part of the Environmental Protection Agency to enforce permits against municipal permittees no matter how loud the lion roars. Whoever the administrator is, when he gets around to that, it is just not there.

The second is the lack of resources. There just are not enough people to do the job.

Today we will hear from Jack Ravan, who is the Assistant Administrator for Water in the U.S. Environmental Protection Agency, someone I have known many years and for whom I have a great deal of respect for what he is doing and what he has been doing in the past. I am very pleased to see him occupy the position he now occupies.

While he could very well say that these things haven't happened on his watch, I know he is not that type of person and he will deal with it head-on.

There will be a hearing down the line when we will look back and they will have happened on his watch, although these have not.

I am pleased to see you today. We are pleased also to have with us today the chairman of our full Committee on Public Works and Transportation, the gentleman from New Jersey, Mr. Howard.

If my chairman has an opening statement, he may make it at this time.

The CHAIRMAN. I do not, but I do have some questions for Mr. Ravan.

Mr. LEVITAS. The ranking member of the committee, Mr. Molinari, has just arrived, and certainly we are pleased to have him here. If he has an opening statement to make today, we will recognize him for that purpose.

Mr. MOLINARI. I had an opportunity late last night to review the testimony of Mr. Ravan, and I think we will have a very good hearing today. I look forward to it.

Mr. LEVITAS. Thank you.

Mr. Rowland, Mr. Wise, Mrs. Johnson, I will recognize members for opening statements if they have any.

Mrs. JOHNSON. I would only like to comment that the testimony yesterday was impressive because of the number of years that the same problem has continued. It is also ironic that in those States where there has been compliance, the pressure to increase permit quality and the demand of the requirements will fall most heavily on the compliers, not on the noncompliers. The economic impact of complying is very clear.

My State allows 25 percent bid reductions, competitive bid differentials, between out-of-state providers and in-state providers; and if, indeed, we are required to comply with more stringent standards while those around us have not been evenly dealt with in terms of the current standards, it will continue the corrosive competitive problems that have existed between complying and noncomplying States.

Mr. LEVITAS. Thank you, Mrs. Johnson.

With that, let me say, Mr. Ravan, I know you are here accompanied by Ms. Rebecca Hanmer. Ms. Hanmer has also previously testified before this subcommittee in another phase of our work with EPA, and we are glad to have both of you here.

I will now administer the oath, if you will rise and raise your right hands.

[Witnesses sworn.]

Mr. LEVITAS. Thank you very much. Welcome. We look forward to your testimony.

Mr. Ravan, the full text of your prepared statement will appear in the record at this point.

[Statement referred to follows:]

TESTIMONY OF JACK E. RAVAN, ASSISTANT ADMINISTRATOR FOR WATER, U.S. ENVIRONMENTAL PROTECTION AGENCY

Good morning, Mr. Chairman and Members of the Subcommittee. I am pleased to be here today to talk about one of the Environmental Protection Agency's (EPA's) top priorities for water programs in 1984 and 1985: stengthening the National Pollutant Discharge Elimination System (NPDES) to improve compliance with the requirements of the Clean Water Act (CWA). With me today is Rebecca W. Hanmer, who is the new Director of the Office of Water Enforcement and Permits. Also here with me are two of our Water Management Division Directors, who are responsible for the NPDES program in the EPA Regions: Paul Traina from Region IV and Myron Knudson from Region VI.

I understand that this hearing was promoted—at least in part—by a recent report issued by the General Accounting Office (GAO) entitled: "Wastewater Dischargers are Not Complying with EPA Pollution Control Permits." I have read this report, and I consider it a very thorough assessment of many of the challenges that the Agency faces in administering the NPDES program. I am here to discuss these challenges candidly with you, and to tell you about some of the actions we are taking to improve the implementation of the NPDES program, which is the basic regulatory mechanism for ensuring that dischargers meet the requirements of the Clean Water Act.

I want ot begin my remarks with a personal assessment of where EPA's leadership stands on the general subject of enforcement. I think it is safe to say that Bill Ruckelshaus has given this area top priority since returning to the Agency. He and his Deputy, Al Alm, are very concerned about enforcement, and have established a number of management goals and systems that are specifically designed to move both EPA and State programs forward.

I believe in the Administrator's new management initiatives, and I have added to them in the water program area. For example, three of the five priority areas in my own performance standards for this fiscal year deal with meeting key objectives in the NPDES program: reducing the backlog of expired major municipal and non-municipal permits, both in EPA and NPDES States; improving compliance rates for both municipal and non-municipal permittees; and increasing the number of municipalities with approved pretreatment programs.

Let me emphasize that these goals are not just vague generalities. The Administrator's planning and accountability system contains a number of ambitious numerical targets that must be met by my office in Headquarters and by our Regional Administrators and Regional Water Division Directors. When it comes time for performance appraisals, I expect the Administrator's evaluation of our program to be especially demanding in the areas of permitting and enforcement. Likewise, I intend to use performance standards and my upcoming mid-year evaluation of Regional water programs to make certain that the Regions are carrying out their part of the bargain. As I go through my statement, I will mention some of the specific policy and management improvements and initiatives of the past nine months and how I think these changes will strengthen our NPDES program.

As the Committee is aware, the Office of Water shares enforcement program responsibilities with EPA's Office of Enforcement and Compliance Monitoring (OECM). In addition to the emphasis we are now placing on permitting and enforcement, the Administrator recently strengthened the role of OECM, which is responsible for managing the court enforcement cases that are referred by water and other programs, and providing us with policy and assistance on identifying and preparing sound cases.

Now, OECM also has a comprehensive enforcement and evaluation program that involves a number of new activities that complement our efforts: conducting independent management reviews of enforcement and compliance activities in the Headquarters' program offices and Regions; identifying successful compliance approaches and transfering these techniques across program lines where this makes sense; and promoting better compliance monitoring and management information systems. In short, Courtney Price, who heads OECM, and I are partners in water enforcement, and I believe that this partnership will pay dividends in a stronger overall program.

In response to your request, I want to provide you with my assessment of the extent to which dischargers are complying with their permit cleanup requirements. In presenting my assessment of where we stand, I will discuss separately the compliance of major industrial and municipal dischargers. The Agency can only provide a comprehensive assessment of compliance by major permittees because our reporting system is based on Quarterly Noncompliance Reports (QNCRs) and the NPDES regulations have only required these reports to list compliance by major sources. I will address the issue of minor permittees later in my statement.

First, let's look at the compliance picture for our major industrial dischargers, which I consider one of EPA's true success stories. The first round of industrial permits set Best Practicable Technology (BPT) limits that had to be met by July 1, 1977. In 1977, only about 80 percent of major industries dischargers had completed installing the technology necessary to meet BPT requirements. Today about 96 percent of major industrials have completed the construction needed to achieve the final effluent limits in their first round permits. Only eight percent of the 3383 major "industrial" permittees that completed facilities and are being tracked against final effluent limits (in first and second round permits) were in significant noncompliance in the latest quarterly reporting period.

I consider this record of complying with permit requirements to install and maintain treatment systems a substantial accomplishment of the first 12 years of the NPDES permit program. The results in terms of wasteload reductions from industrial dischargers are impressive: an estimated 71 percent reduction of biochemical oxygen demand; 80 percent reduction of suspended solids; 71 percent reduction of oil and grease; 52 percent reduction of dissolved solids; and 74 percent reduction for phosphate. Beyond this, the BPT equipment now in place is controlling a significant amount of the potential discharge of heavy metals and toxic organic chemicals.

How did we get such a dramatic improvement in industrial compliance? EPA and the States caused it to happen by aggressively enforcing against major industrial dischargers that failed to meet their compliance schedules in the late 1970s. This "push" prompted industrial noncompliers to install the necessary abatement controls. Since then, the Agency has been actively enforcing the final effluent limits for industrial dischargers, which, I might add, is a far more complex task than the earlier one of enforcing schedules.

I will return to the issue of industrial compliance later to tell you about the whole new wave of industrial requirements that we face in the second round of industrial permitting, and what this may portend for the future of the NPDES industrial compliance program. For now, however, I want to leave you with the point that EPA and the approved NPDES States have been successful in getting the first round of major industrial permits in place and effectively enforcing the requirements in those permits.

Now I want to turn to municipal compliance, where the picture is not quite so bright. In 1977, fewer than 40 percent of major municipal dischargers had completed construction to meet secondary treatment requirements. Today, close to 70 percent of the 3585 total major municipal dischargers have completed the construction necessary to meet secondary treatment requirements. At present, 2220 major municipals are being tracked against final effluent limits (meaning that they have completed all facilities needed to meet their permits). Of that number, 346 or 15.6 percent were in significant noncompliance in our latest quarterly reporting period. Overall, 808 out of 3585 total major municipal dischargers were in significant noncompliance in that period, if you add the 462 municipalities with uncompleted facilities that ailed to meet construction schedules and interim effluent limits. The two categories added up to 22.5 percent of major municipal permittees in significant noncompliance as we define it. I want you to know that we are not proud of these numbers, that we are not willing to settle for these performance levels, and that we are firmly committed to getting the compliance numbers where they belong—quickly.

I'd like to mention a few of our initiatives in the area of municipal compliance because I think they respond to key issues that GAO raised in its report. First, we recognize that the Agency has historically tended to link municipal compliance with the availability of Federal funding to construct the necessary wastewater treatment technology. With few exceptions, the Agency has exhibited a reluctance to push municipalities to comply with the requirement of the Clean Water Act unless they receive a Federal grant.

We have come to recognize more recently that the Federal coffers are not limitless, and that compliance should not be tied automatically to whether or not a community receives a Federal grant. There are, in fact, many communities that can afford to build wastewater treatment facilities on their own—without Federal financial assistance. I believe we have a significant task here—both from the Agency's and from Congress' standpoint—in educating the public to the true costs they will have to bear over time for clean water.

In an effort to decouple the historic link between the concepts of Federal funding and compliance, the Administrator recently signed the national Municipal Policy. This policy states very clearly that the Clean Water Act requires all publicly owned treatment works (POTWs) to meet the statutory deadlines and to achieve the water quality objectives of the Act—whether or not they receive Federal funds. While we do not plan a wholesale attack on unfunded municipalities we do think that this policy represents a major step forward in the Agency's municipal compliance program and enables us to move ahead with the job that needs to be done.

Second, as the GAO report points out, we not only have a problem getting municipalities to construct the necessary technology to meet secondary treatment requirements. We also have a continuing—and in some cases serious—problem with fully constructed wastewater treatment facilities that are not operating in compliance with their permit requirements. This category of municipal dischargers will, in fact, receive our most immediate attention under the National Municipal Policy.

We are especially concerned about the compliance rates for municipal facilities that were constructed under P.L. 92-500. These plants were planned, designed, and constructed to meet secondary treatment requirements (or better) and we should expect to see very high levels of compliance. As of October 1, 1983, however, the EPA Regions reported that 12 percent of completed major P.L. 92-500 facilities were in significant noncompliance with their final effluent limits (in both EPA and NPDES approved States). We consider this a serious problem; our goal for already operating P.L. 92-500 plants is to reduce the number in significant noncompliance to less than 10 percent immediately and, over the longer run, to do substantially better than that.

In addition to focussing our NPDES compliance efforts on completed facilities that were constructed with Federal funds, our Construction Grants Program also has two other new programs to help POTWs identify and solve the problems they are experiencing in meeting permit requirements. First, the 1981 Amendment to the Clean Water Act created a new one-year certification program, which requires that any municipality receiving a Federal grant must certify affirmative one year after it initiates operation that the facility is meeting its design specification and permit requirements or it must take corrective action at other than Federal expense to comply with these requirements. This program will help provide certainly that newly constructed facilities are fully able to meet their permit requirements.

Second, EPA has a program to diagnose operation and maintenance problems and to provide on-site operation and management training to correct problems at facilities that are out of compliance. This is a computerized model that helps a municipality pinpoint a range of technical problems with the facility. We recognize that technical malfunctions are only part of the problem, however, and we are currently in the process of adding the capability to look at financial and management problems that frequently contribute to municipal noncompliance.

In addition to these "problem identification" activities, EPA has also used funds provided by Congress to assist 27 State training facilities for operators of POTWs. The main thrust of this program is to move the States and municipalities toward self-sufficiency in operator training. This, in turn, helps produce more effective operation and maintenance of wastewater treatment facilities once they are fully constructed and operational.

Finally, the GAO recommended that EPA look at an incentives system for improving performance levels of municipal wastewater treatment facilities. The Administrator has a genuine personal interest in this particular issue. He recently formed a workgroup on Operation and Maintenance Costs and Incentives, which is charged with exploring ways to improve POTW performance levels and to reduce the cost of operation and maintenance. The workgroup will be examining the New York subsidy program that GAO cited, as well as other options for incentives and disincentives for better operation and maintenance of POTWs.

Now I want to step back a little and look at the NPDES compliance program from a more analytical vantage point. I think it is useful to conceptualize the compliance program as a pyramid (see attactment #1), and to discuss the integrity of the NPDES compliance and enforcement program from two different perspectives:

1. How do we know whether a violation has occurred?
2. What do we do in response to know violations?

The NPDES compliance program relies very heavily on a self-reporting system to discover who is in violation. Self-reporting takes place in the form of Discharge Monitoring Reports (DMRs), which the discharger submits and which EPA and the States then use to verify compliance status and to prepare the Quarterly Noncompliance Report (QNCR). As the GAO report notes, it is here at the base of the pyramid that the credibility of the NPDES compliance program is most vulnerable because of the inherent potential for abuses, such as non-reporting, errors in reporting, errors in laboratory analyses, and false reporting. We are, in a very real sense, relying primarily and honesty of the dischargers and on a data management system that is free of human error.

Let me assure you that, when we discover that a discharger has falsified its DMR, our policy is to take very strong action. For example, in a recent case in Virginia, a company that operates sewage treatment plants pleaded guilty to Federal charges of falsifying data. The company was fined $5000 on one count and received a suspended $5000 fine on the second count. In addition, the operations vice president for the company was fined $500, was ordered to serve 100 hours of community service, and was placed on six months probation. In a similar case in Missouri, a company pleaded guilty to 4 misdemeanor violations and one felony charge of lying. The company faces fines of up to $110,000 and company officials are scheduled for sentencing later this month. The point is that there are substantial penalties for deliberate falsification of DMRs, and these fines do provide an effective deterrent to widespread abuse oif the self-reporting system. When we find such violations, our policy is to go after them aggressively.

The bottom tier of the pyramid is, therefore, how we discover that a discharger is in violation of its permit. It is also how we find out the nature of such violations. We have spent a great deal of time, energy, and resources making improvements to this part of the NPDES compliance program. These efforts are not particularly glamorous to the outside world, but they are essential to maintaining the intergrity of the system. I would like to describe some of our most recent effort in this area.

First, we are in the process of redesigning our computerized data management system to improve its capabilities. This system, which we call the Permit Compliance System or PCS, presently contains information on permits, inspections compliance schedules, and enforcement activities. The enhancements that are under way will allow PCS to store data on evidentiary hearings, to track grant data for NPDES permittees (POTWs in the Construction Grant Program), to automatically detect compliance schedule violations, and to forecast compliance schedules that are nearing completion. The enhancements will allow us to encourage wider State participation in PCS.

Our ultimate goal is to link all the Regions and States into our automated system so that we can retrieve data on specific violations, as well as have aggregate data for conducting in-depth analyses of our national compliance program. This automated information base will, for example, substantially improve our ability and that of the States to analyze compliance trends in certain discharger categories so that we can target enforcement and compliance monitoring inspections more effectively. At present, most of the Regions and 8 States are regular users of the system, and we will be working hard to get all States into the system by the end of Fiscal Year 1985.

Second, we are intensifying our follow-up activities in the DMR Quality Assurance program to improve further the quality of permittee self-monitoring data and to reduce the temptation to cheat. Since its inception in 1980, our follow-up activities in this program have helped many permittees to identify and to correct both analytical and data handling problems. Each successive round of national results shows that we are making substantial improvements in the quality of data we receive, and helps us to further concentrate our compliance and enforcement actions on problem cases.

Of course, EPA and the States routinely supplement the self-monitoring system with information we obtain through our compliance inspection programs. EPA or the State inspects almost all major dischargers annually in order to verify compliance status as reported to us in the DMRs. Our data show that about 4000 minor dischargers were also inspected last year.

In summary, we think we have made substantial progress in the last year in getting better information on violators. We still have a way to go, however, especially in the area of getting an efficient nationwide data system on permittees that includes all the States.

The next two tiers of the compliance pyramid show how we respond once we discover a violation—how we "police" the system. The middle tier is the first level of responses to known violations, which are prescribed by EPA's NPDES Enforcement

Management System (EMS). The EMS contains criteria on appropriate enforcement responses to all violations, including criteria for informal responses to less significant violations in order to advise noncomplying permittees of their liabilities and their responsibility to return to compliance as quickly as possible. Informal responses include telephone calls, warning letters, and follow-up inspections. These are the relatively inexpensive responses that very often do, in fact, produce fast results.

Again, we are in the process of making improvements to the second tier of the compliance program. One of our major improvements is a new definition of significant noncompliance for the Regions and States to use for QNCR reporting purposes, as well as for management tracking. We have been working with the Regions and States on this definition for some time in an effort to achieve some much needed nationwide consistency in our compliance reporting.

The definition of significant noncompliance will help us focus EPA's informal versus formal enforcement priorities more clearly. Further, as part of the Office of Water mid-year evaluations this Spring, we plan to conduct a comprehensive management review of how well the Regions are carrying out the EMS system and how effectively they are overseeing State enforcement response. I will cover that evaluation process in a bit more detail later in my statement.

The apex of the compliance pyramid represents formal enforcement responses, such as administrative orders (AOs) and judicial actions. Judicial actions are, of course, the part of the program that gets most of the attention from Congress and the public. Formal enforcement is also, I might add, the most expensive part of the NPDES compliance program—both in terms of resource commitments and time delays. For example, an individual court action can sometimes tie up several EPA, DOJ, and/or State personnel for a year or more.

As you well know and as the GAO report cites, a couple of years ago the Agency adopted an enforcement policy of "negotiation" prior to "confrontation." As a result of this, as well as a restructuring of EPA's enforcement organization and a decline in overall Regional resources for water programs, we experienced a drop in the number of enforcement actions and case referrals to the Department of Justice during this period. This has, of course, created serious credibility problems for the Agency, and we are now doing everything in our power to regain our reputation as a strong enforcer of the laws that Congress entrusted to us.

The Administrator recently delivered a compelling message to one of the largest groups of EPA enforcement personnel ever assembled. Mr. Ruckelshaus was keenly disappointed in the number of enforcement actions the Regions and States were bringing. He told the group that they not only has his support, but his demand that something be done to improve our record of achieving compliance and establishing an enforcement presence. He said, and I quote: "We have to show the people that we mean business, that the regulations and laws that are passed by Congress are statements of public policy and will be carried out." Let me assure this Committee that I am in complete agreement with the Administrator and that I am doing all I can to make absolutely certain that we in the NPDS program are carrying out the intent of Congress.

To back up his demand for more active, vigorous enforcement, the Administrator asked for additional resources to carry out EPA's ambitious enforcement initiative. In water programs, for example, our budget request includes 18 new positions for NPDES compliance and enforcement in FY 1985. This should allow us to nearly double the resources directed at our municipal administrative enforcement effort.

More immediately, we have identified a specific category of 1,100 major municipal and industrial significant noncompliers that we plan to target for intensive review and follow-up this fiscal year. We are, in fact, committed under the Administrator's tracking system to bringing every one of these significant noncompliers back into compliance or taking a formal enforcement action by the end of this fiscal year. From this experiment, we expect to learn whether permittees are coming back into compliance within the year, and to assess the kinds of enforcement actions that were necessary to bring these noncompliers back into compliance.

Finally, as the GAO recommended, we are now asking the Regions and the States to report compliance with interim effluent limits and construction schedules. This change will allow us to track the effluent limit compliance status of one hundred percent of major permittees, not just permittees on final effluent limits.

I see this increased emphasis on formal enforcement activity as critical to the integrity of the NPDES compliance program as well as to the overall credibility of the Agency. I have already discussed the National Municipal Policy and the immediate emphasis that we are placing on completed plants that received Federal funds but still are not being operated in compliance with their permit requirements. I have also provided the Committee with the information it requested regarding the current status of court enforcement actions by EPA and approved NPDES States, which was prepared by the Office of Enforcement and Compliance Monitoring.

As I mentioned earlier, we plan to conduct a review of how the Regions are using the established procedures in the Enforcement Management System (EMS) for bringing enforcement actions. Our reviews are intended to find out whether the Regions are using the enforcement response criteria that have been established, whether the application of these procedures is consistent from Region to Region, and whether there is a need for us to update the procedures. I am particularly concerned about the GAO's finding with respect to the length of time it takes for EPA and the States to take formal enforcement actions, as well as the quality of these actions. I have asked Rebecca and her staff to examine this matter, and to make recommendations to me for ways to improve the timeliness of our formal enforcement response actions.

GAO has also pointed out a significant statutory deficiency in EPA's enforcement program: the lack of authority for EPA to assess administrative penalties for violations. The Administration has strongly supported such authority in its recommended changes to the Clean Water Act. We think this authority would add considerable punch to our administrative enforcement efforts, and would greatly enhance the timeliness with which the Agency could resolve much of the noncompliance problem.

I might add also that administrative enforcement is much less costly to the Government, so authority to assess administrative penalties would obviously help us achieve more with our resources. When I am asked what changes in the program would most reduce incentives for noncompliance, having this authority must be at the top of the list.

Before leaving this enforcement discussion, I want to point out that we are in the initial stages of implementing a new enforcement program for pretreatment requirements. Given the history of this program, we think it is vital for EPA and approved NPDES States to establish a strong enforcement presence early in the game. Dischargers must know that we are serious about enforcing both POTW pretreatment program submittal requirements and industrial categorial pretreatment standards. When the pretreatment program is fully operational, we will have 1,675 approved local pretreatment programs with some 13,000 indirect dischargers subject to EPA's categorical pretreatment standards—plus thousands more that are subject to the general pretreatment regulations. We must have a sound strategy for directing our resources to enforcement actions against key violators to assure us the biggest return for our investment.

We are currently developing a short-term strategy for initiating enforcement actions against key pretreatment violators, and we fully intend to have several actions underway before the end of this fiscal year. We know we cannot get to every violator this year, but we and the States can establish a highly visible enforcement presence that demonstrates our commitment to this important program and provides a deterrent effect.

Now I want to turn to the foundation on which the compliance pyramid rests: the enforceable document we call a "permit." The integrity of the NPDES compliance program is directly related to the integrity and completeness of the NPDES permits.

The GAO report cites a number of problems we have experienced in the permits program in recent years. First, we have had a large backlog of expired major and unissued minor permits, and we have had resource constraints in dealing with the permit backlog. Second, we have lacked the necessary effluent guidelines that define technology-based requirements for "Best Available Treatment (BAT); these guidelines both facilitate permit issuance and establish a nationally consistent baseline.

I am pleased to report, however, that we are making substantial progress in both areas. We now have 22 of the 29 BAT effluent guidelines in place, and we have begun to issue new Best Available Technology (BAT) permits to major industrial discharges and to reduce the backlog of major industrial permits. In the fiscal year just ended, EPA issued more than four times the number of BAT major industrial permits issued in the previous fiscal year. We expect to do even better in this fiscal year because of the availability of BAT guidelines and the substantial increase in permit issuance resources: approximately 70 new positions in FY 1984 and another 38 requested for FY 1985.

The Agency's accountability systems and performance standards reflect our goal of eliminating EPA's backlog of expired major industrial and municipal permits by the end of FY 1985, and we are committed to meeting this goal. In addition, we are working more closely with the approved NPDES States to ensure that they are also committing the necessary resources to eliminate their expired major permit backlog by the end of FY 1985. With planned increases in EPA permit writer training and assistance, we should be able to help the States achieve their targets on time.

In the area of minor discharge permits, EPA and the States have a more difficult challenge to meet. While the rate of issuance of minor permits have increased, we cannot expect to eliminate the backlog of expired minor permits by the end of FY 1985. On the positive side, however, I want to point out that our ability to adequately address minor discharges has been enhanced in the last couple of years by the general permit approach in the NPDES program. EPA has issued—or is preparing to issue—general permits that could ultimately cover about 30,000 minor NPDES discharges. We believe that about 10-15 percent of these 30,000 facilities are violators who never applied for the required NPDES permits, about 40-45 percent are facilities with expired permits, and the remainder are facilities that applied but never received a permit.

Right now, general permits already issued for offshore oil and gas, coal mining, animal feedlots, and construction activities cover more than 6000 facilities; proposed permits for non-contact cooling water, coastal oil and gas, petroleum storage and transfer facilities, hydrostatic testing of natural gas transmission pipelines, deep seabed mining, and seafood processing cover another 5300 facilities; and permits covering 19,000 facilities are under development. We think that the effective use of general permits combined with an increased rate of issuance for minor permits will allow EPA to come close to eliminating the minor permit backlog by FY 1987.

EPA and the States will continue to emphasize issuance of "second round" permits to cover major dischargers—especially those with large discharges containing significant levels of toxic pollutants. The primary emphasis will be on adding controls for toxic pollutants to the conventional pollutant controls that were previously established and largely implemented in the first round of permits.

Our policy for issuing second round permits places top priority on setting limits necessary to address known instances of water use impairment. In addition it calls for reviewing and reissuing all major discharger permits to reflect technology-based BAT controls on toxic pollutants. We also recently issued our "Policy for the Development of Water Quality-based Permit Limitations for Toxic Pollutants," which integrates the use of both biological and chemical analytical methods to assess and establish controls on toxic and nonconventional pollutants.

The bottom line is that the quality of the permits we issue is as important as the quantity. Our overall objective is to ensure that the second round of permits is of high quality, lasting value. To promote quality in our permits, we are moving ahead with a pilot quality review program in FY 1984. Under this pilot program, we plan to assess the quality of EPA-issued permits in terms of their conformance with the Clean Water Act and the regulations, and to pinpoint specific problems that require oversight. We will also provide guidance and assistance to assure that these problems do not recur.

I said earlier that I would return to the issue of compliance by minor permittees. As I am certain you know, Mr. Chairman, EPA has not been able to issue all the permits on time nor to fully monitor the compliance status of minor permittees in non-NPDES States. Through the National Municipal Policy, we are addressing minor municipal sources that are causing water quality problems and minor POTWs that were constructed with EPA grant funds. To the extent that we are able to monitor minor permittees, it is EPA's policy to enforce against verified violations in the same fashion as we do against major permittee violations.

Finally, Mr. Chairman, in your invitation for me to appear here today you asked me to address an issue that is of personal interest to me as a former Regional Administrator: how this Agency monitors and evaluates the effectiveness of a program that is largely run by the States. We now have 35 States and one Territory that are approved to administer the NPDES program, and we must maintain oversight of these programs without being unnecessarily intrusive into State affairs. It is a delicate balance that we must strike, but it is vital that we maintain constant vigilance over our approved State programs and be in a position of taking quick, decisive action when inadequacies are identified or when technical or legal assistance is requested by the State,

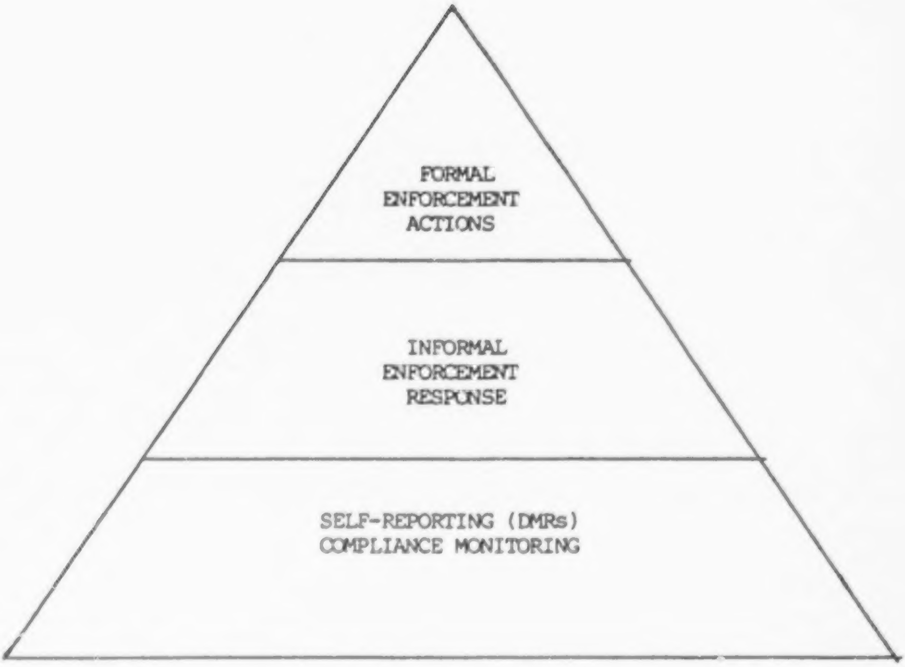
I have alluded earlier to the fact that the Office of Water has put into place a very strong program for overseeing all our Regional and State water programs, including the NPDES program. It consists of three key elements: annual operating guidance that tells the Regions and States what our National priorities are for the fiscal year; an accountability system that enables us to track Regional and State progress towards achieving those National priorities; and a formal, mid-year evaluation system that takes us out to each Region to assess progress to date and to determine the need for mid-course corrections.

Last year was the first full year of implementation for this management system. I understand that it was viewed as a success by both Headquarters' Program Offices and the Regions. We did uncover problems with some of our State NPDES programs, and we did request that the Regions take some action to correct these problems. To date, we have not rescinded any program approvals, but we have not ruled this out in the future. We view this as a very harsh remedy, one that should be avoided unless it becomes absolutely necessary. We are, however, currently looking at criteria for handling these special cases as they arise.

Finally, I want to assure the Committee that EPA will continue to use its authority to overfile as a mechanism for maintaining the integrity of approved State NPDES programs. Under this authority, we can—and do—take direct enforcement action against violators in cases where an approved State's failure to take timely and appropriate action may threaten the achievement of national compliance goals.

In closing, I want to say that our goal in the NPDES program is to have the best compliance program in the country. Rebecca and I are here to answer your questions about what we are doing today and what we plan to do tomorrow to make this happen. I thank you for the opportunity to appear here today, and I look forward to appearing before this Committee again in the not too distant future to report on the progress we have made.

ATTACHMENT 1


FORMAL
ENFORCEMENT
ACTIONS
INFORMAL
ENFORCEMENT
RESPONSE
SELF-REPORTING (DMRs)
COMPLIANCE MONITORING

Mr. LEVITAS. Please proceed.

TESTIMONY OF JACK E. RAVAN, ASSISTANT ADMINISTRATOR FOR WATER, U.S. ENVIRONMENTAL PROTECTION AGENCY

Mr. RAVAN. Thank you, Mr. Chairman.

In view of that, I would like to proceed through a statement this morning emphasizing certain points. Even last evening, I had some hesitation about doing this. However, I do feel the benefit of this hearing this morning might come in the question and answer session. Therefore, I will attempt to highlight my statement and submit it as written in full for the record.

As you point out, I do have with me this morning Ms. Rebecca Hanmer. She is the new Director of the Office of Water Enforcement and Permits.

I also have with me certain elements of the EPA staff who will attempt to help me this morning to derive certain detail because this is indeed a complex subject and I would like to feel free, Mr. Chairman, with your permission to call upon them from time to time as I may feel the need so that I can fully elucidate and develop the topic you would like me to cover this morning.

With me notably is Mr. Paul Traina from region IV in, Atlanta and Mr. Myron Knudson from region VI out of Texas. Myron and Paul are going to help me with this subject this morning.

Thank you again, Mr. Chairman, for allowing me this opportunity on what appears to be my 120-some day back in office. I appreciated your opening remarks and I will attempt, to the best of my ability and for the full panel, to be as forthcoming as I know how to be. I fully recognize the extent of the duties of my office and I have no intention whatsoever of pointing a finger at someone else, either past or future.

I have read with some interest the discoveries made by the General Accounting Office, and I would like to deal with them in some detail as the morning progresses. However, I might point out that we do see the backlog of NPDES permits, majors first and thereafter minors, is certainly at the top of my priorities.

I have felt so strongly about this that, in fact, I have agreed with the Administrator that three of my five performance standards for this fiscal year will deal with this subject, that is: first to reduce the permit backlog, both of the EPA and those NPDES States, that have the program; second, to improve the compliance rates for municipals and nonmunicipals; and third, to increase the number of municipalities with pretreatment programs.

I take this charge seriously, and I have communicated that message to my Water Division Directors at the regional level, some 10 in number, 2 of whom are with me here this morning.

I share these duties, Mr. Chairman, with the Office of Enforcement and Compliance Monitoring as part of the Environmental Protection Agency. Ms. Price and I both serve at the Assistant Administrator level, and we act as a team as principal staff to Mr. Ruckelshaus in the area of water enforcement and compliance.

To date, the Agency can only provide a comprehensive assessment of compliance by permittees in the major category because of our recordkeeping. I might point out for the committee that the statistical gathering of what is happening in the system is one function, while the enforcement or ability to enforce against that picture is an entirely different function. It is easy, for the layman, to confuse the two.

Having said all of that, I would point out the progress that has been made by this committee and others in the Congress in concert with the EPA, the States and the local governments.

Let me identify one of those in particular in the category of major industrial permittees. We think there has been a significant amount of progress made since 1972, realizing that at that time the full impact of this law's requirements, both for construction of best practicable treatment technology (or better) and the operation of technology have allowed what I would judge to be approximately 90 percent of these industrial majors to come into compliance with those requirements and to stay in compliance on a continuing basis.

I will get into more detail about noncompliers as the morning progresses. Obviously, the record with regard to the municipal permittees is less encouraging and we are not as happy here. As the chairman has already pointed out, there are specific reasons for this.

However, in the first 12 years of this permit program, let me point to some significant accomplishments. We have seen a 71-percent reduction in biochemical oxygen demand, an 80-percent reduction of suspended solids, a 71-percent reduction of oil and grease, a 52-percent reduction of dissolved solids, and a 74-percent reduction of phosphates going into the water.

[The lights flash.]

Mr. RAVAN. Mr. Chairman, are you giving me some warning?

Mr. LEVITAS. I think someone may be leaning against the light switch. It may be someone on your staff. [Laughter.]

Mr. RAVAN. I think the dramatic results have been, Mr. Chairman, significant and dramatic and should not be overlooked as we look at the deficiencies in these programs.

With respect to the report itself, Mr. Chairman, regardless of how one measures, regardless of how one counts, regardless of whether you look at the permittees in a particular category over 3 months, 12 months or 18 months, the trend is, in fact, the same: We continue to see a significant degree of noncompliance by permittees and we continue to see the EPA and the States falling behind in their workload.

Regardless of that particular characteristic, we have taken certain steps I would like to highlight for the committee. One is, and I think this is probably the most significant thing that has happened since I have had the opportunity to serve the Agency, we have come onto the streets with our so-called National Municipal Policy.

The key factor in that municipal policy is that we will enforce the requirements of the Clean Water Act against municipalities regardless of whether or not they have received or will receive at some point in the future the Federal funds that are a part of the act itself. I think this is a significant step, and a very courageous one on the part of our Administrator, Mr. Ruckelshaus. I am looking forward to the opportunity of carrying out that policy.

In the past we have had problems with even fully-constructed noncomplying wastewater treatment facilities that have received Federal financial assistance under Public Law 92-500. This would be our first category of municipalities that we will move against.

What would be a realizable goal in the area of municipal compliance? My own opinion is that we have continued to see at least a 20 percent noncompliance rate; I would like to see that reduced almost immediately to 10 percent, for Public Law 92-500 facilities, with a long-term goal of 5 percent in this area.

One of the things that will help in this area, Mr. Chairman, is the provision by the Congress in the 1981 CWA amendments that requires a new 1-year certification program. This provision requires that any municipality that receives a Federal grant must certify affirmatively 1 year after it initiates operation that the facility is meeting its design specification and its effluent limitations.

There are a number of ways a municipality can achieve this. We anticipate receiving some 200 certifications by the end of this fiscal year, the design engineer and the construction firm operating together will provide this certification of the facility. We continue to see problems in the O&M area, the operation and maintenance of these plants.

I have no basic disagreement with the conclusions reached by the General Accounting Office and others. There are many reasons for this, and we will get into some of these in detail today.

I would point out to the committee that EPA has also used funds provided by Congress to assist 27 State training facilities for operators of POTW's across the Nation. I think that the States have an increasing opportunity to require operators to maintain a proficiency level that will not only correct O&M problems but will also allow us to demand that the operation and maintenance of these plants be on a continuous basis in the future.

The GAO reported one item that I would like to comment on: the incentive program in the State of New York. In New York, the State rewards those plants and municipalities that have operated their plants in a satisfactory or better manner. The Administrator, Mr. Ruckelshaus, has looked at this with some interest and he has put together a workgroup lead by one of his special assistants to look at this area. It may very well be that we may be back to you with some recommendations or how an incentive program could be extended nationwide.

How do we know that there are violations in the system? As pointed out by the GAO, we rely primarily on the discharge monitoring report OMR that must be submitted by the permittee. This report comes in not less than monthly to the States or to EPA and is then pulled together into a report called the Quarterly Noncompliance Report [QNCR].

This report in the past, has reported only, on noncompliance of the major discharges. There are arguments both pro and con on the validity and usefulness of such a system. However, let me point out to the committee that when one looks at the total universe of permittees or discharges to our nation's waters, it is indeed very, very difficult to get a very clear and accurate picture of what happened on any particular day, that month and that quarter.

In the past, this system has seemed to serve us well. We have taken certain steps that we will talk about in some detail to improve that system. The underlying foundation for the discharge monitoring reports is that Congress saw the need to include incentives in the law that would require truthfulness and accuracy of reporting. There is also provision in the law that if one purposefully or intentionally tampers with the discharge monitoring report or knowingly submits inaccurate information it may result in criminal prosecution. The penalties could be 6 months in jail, a $10,000 fine, or both.

We have, in fact, taken some cases to the courtroom under that provision. We have received some fines and we have received at least one threatened jail sentence. I hope the message will get out to the persons compiling those reports that we do mean business.

But the record within that reporting system is nowhere near what we would like it to be.

We have taken one other step, Mr. Chairman, which I think the committee will appreciate, and that is the inclusion of a computerized system in our recordkeeping, very much like the GICS system under the Construction Grants Program. When this system, called the Permit Compliance System [PCS], is fully used by all the regions and NPDES States, we will be able to more adequately, conveniently and on a continuing basis be able to track and to report to the committee a truer picture of what is actually going on with compliance.

I would have to point out that this is an early effort. Only eight States are regular users of the system, and we have much work to be done to get the rest of the States into the system.

One of the principal reasons I am mentioning this to the committee is that this has, in fact, been a paper and pencil system, a manual system in the past. Therefore, when we talk about getting out only quarterly reports, that probably has a lot to do with it. It has been a very resource intensive process.

One of the significant cornerstones of the entire system and one where the General Accounting Office and EPA differed is the definition of what is a significant noncomplier. We choose to use a somewhat different definition than GAO.

I won't bore you with the details of that. I am sure you are well aware of the differences, or, at least if there are differences, we can deal with that in the Q and A session. I would point out to the committee, however, that regardless of whether you use our definition or the GAO's definition, the trend is the same: there are a number of major permittees that are, in fact, out of compliance.

Another item I would like to highlight for the committee is the Agency's policy under which the EPA regions and the States operate when they are dealing with compliance with NPDES permits and the need for enforcement.

There are a number of subordinate reasons, but I will highlight two or three. One is that in 1982 or thereabouts, the Agency changed its policy what might appear to the casual reader twice. First, in the early part of that year, it said that the overriding guidance would be for the regions and the States to carry out a policy of negotiation rather than confrontation with the permittees.

I have asked members of my staff and members of the regional staffs: what did this mean to you as you carried out your job from day-to-day? It simply meant that the overburden of the system trying to get noncompliers into court or other remedies was simply too stifling, and that a negotiated settlement might, in fact, bring the permittees back into compliance sooner than confrontation leading to years of courtroom proceedings.

In some quarters, this was interpreted to mean that the enforcement area was going soft. Realizing this, the Agency put out another set of instructions which said, no, that is not what we meant. We meant that we want compliance. If you can get it by negotiation, fine. If you can't, you should confront the permittee.

The second reason was that there was indeed an organizational change, both at the headquarters and regional levels, of the EPA. Any time a major governmental organization of this type goes through a significant organization or reorganization, work productivity and performance levels slip. I think that was a contributing factor in this case.

Let me finally emphasize what is the will of the Agency at this point in time. Bill Ruckelshaus has made that very clear. I will quote him here. He said, to some 200 key enforcement people from across the Agency not more than 30 days ago:

> We have to show the people that we mean business, that the regulations and laws passed by Congress are statements of public policy and will be carried out.

I have reinforced that. I have asked just recently whether the people at the regional level know and understand what that means. They have indicated to me that they certainly do, and that they are ready to get on with the enforcement task.

I would like to discuss with the committee the budget items that the GAO brought to light. I welcome your questions in that arena, and will be happy to answer as best I can.

We are conducting some additional work elements, Mr. Chairman, that we think will help us develop a better picture for you and for the committee members as to what is happening out there. We have identified a specific category of 1,100 major municipal and industrial significant noncompliers that we plan to target for intensive review and followup this fiscal year.

We are, in fact, committed under the administrator's tracking system to bring every one of these significant noncompliers back into compliance or take a formal enforcement action by the end of this fiscal year.

From this experiment, we expect to learn whether permittees are coming back into compliance within the year, and to assess the kinds of enforcement actions necessary to cause that to happen.

Finally, Mr. Chairman, I will close my remarks and rely upon my statement for questions.

The GAO pointed out a significant statutory deficiency in EPA's enforcement program: the lack of authority for EPA to assess administrative penalties for violations. The administration has strongly supported such authority in its recommended changes to the Clean Water Act. We hope that the Congress will act upon that proposal and give us that authority.

I would like to turn finally, Mr. Chairman, to a pyramid type of picture, a graphic that has been submitted to the committee. We do, in fact, rely upon a cornerstone or basic foundation of the self-reporting discharge monitoring report. These reports, good, bad or indifferent—excellent, in some cases—give us the baseline information with which we work.

To take an informal enforcement response or, indeed, to proceed to the court, we do two other things that I believe strengthen the system. First of all, we conduct some 2,000 inspections during the year. The States also do inspections, another 8,000 or so. These individual inspections do allow us to spot check what is actually happening as opposed to what is being reported in the discharge monitoring reports.

And finally, we do, in fact, run a Quality Assurance Program with our laboratories across the country. We split samples with the permittees, and as indicated in your report, we have the various labs that do the work across the Nation for States and permittees run an analysis of the samples. This provides us with some estimate of whether or not the labs know their business, whether or not they are using the correct analytical methods, and whether or not that Quality Assurance Program is operating for us.

Mr. Chairman and members, I thank you for the opportunity to appear before you today and welcome your questions.

Mr. LEVITAS. Thank you, Mr. Ravan. I appreciate your testimony, and as I said, your full statement will be made a part of the record.

At this time the Chair will recognize the gentleman from New Jersey, Mr. Howard. I know he has some questions and must attend another meeting.

The CHAIRMAN. Thank you very much, Mr. Chairman.

Thank you very much, Mr. Ravan, for your testimony.

I would like to focus on one idea from two of the things. One thing you said in your statement was that you are noticing an increase in noncompliance and an increase in EPA's workload. You made that statement, and on page 5 in your testimony you said you do recognize that your agency has historically tended to link municipal compliance with the availability of Federal funding to construct the necessary wastewater treatment technology plants.

Mr. RAVAN. Yes, sir.

The CHAIRMAN. Also, I guess it is true that where the Congress had been authorizing $5 billion a year overall for sewage treatment plant construction, that all of the budgets that have come out from this administration have reduced that $5 billion to $2.4 billion.

Mr. RAVAN. Yes, sir.

The CHAIRMAN. It would certainly seem that in this linking of the available Federal money to compliance, that perhaps the budget itself is the trigger for the noncompliance, increasing noncompliance, because if you cut the money by more than one-half, at best you can get half the job done you have been getting in the past; isn't that accurate?

Mr. RAVAN. Mr. Chairman, I believe that the concept that you have outlined is accurate. Whether or not it was right—and my testimony this morning is to indicate that we have perhaps seen the error in that policy, perceived or real—there was a coupling. You see this not only in the Agency: policy but you see it in actions taken by the courts. We have, for example, filed and concluded some 57 municipal CWA cases across the Nation. The judge simply says in most of those cases: Mr. EPA, have you provided funds under the same act to make it possible for this city to carry out the provisions of the act? And we either say yes or no. Generally the judges have been reluctant, and, we have been reluctant to enforce rigorously if the funds were not available; and, when the funds were not available, the cities were basically put on a priority list or waiting list to receive Federal funds.

If one accepts that premise, then one is directly saying that, money is the answer. What I am reporting to you this morning is we will not say that in the future. Under the municipal policy, we are saying that, whether or not a city has received a grant, that city must comply with the act, which says these municipal discharges must, indeed, be controlled.

The CHAIRMAN. What I am hearing, perhaps, then is due to the Federal Government's cutback, the lack of funding available by the Federal Government, cutting more than half in each of the last 3 years, that there is no doubt that we will either slow down the improvement of water quality in this country or add to the degradation of the water quality in this country. That is No. 1.

So apparently this administration's, if not goal, this activity by our Government is actually working to the detriment of clean water in the country.

Now, you say we used to take that into consideration and say, if we are going to cut back the money you have been expecting, people might go to the courts and the courts might make a decision since the Federal money is being cut back we will give you longer to comply; but now you say we are going to change all of that, we are going to be firm on clean water; we will still give them much less money but we will demand more that they be in compliance.

Well, are you going to be able? I mean, where are you putting the burden? If this money couldn't come totally locally before, do you mean that all of a sudden they are going to take up the whole burden that the Federal Government would have been providing had we kept the funding at the level we had it before?

Mr. RAVAN. Mr. Chairman, you have put your finger right on the horns of the dilemma of the Clean Water Act. The original $18 billion was seen as the total price tag. We now know that the price tag is well in excess of that amount. In fact in terms of total needs of the country, several times that amount.

The CHAIRMAN. When we started out the interstate program, I think it was going to cost about $18 billion or something, and now we only need $37 billion to finish the last 5 percent of it. So I am saying the numbers we talked about—I guess you are talking about 1965.

Mr. RAVAN. 1972.

The CHAIRMAN. I know back in 1965 when we were working on the first Clean Water Act, we were talking about this being an $18 billion program, but many people think and I believe that water pollution control, the sewage treatment plant structure is maybe one area, one problem in this country you can solve by throwing money out. We don't need a great deal of new technology which we don't as yet have. We know who is polluting. We know it is not all just corporations, it is the people, the communities. We know if we build better sewage treatment plants, we will have cleanerwater. Therefore, it is just putting out the money to build it.

And if we want to get back on track—and as you are indicating, perhaps it was unfortunate we cut this money way back. We do have legislation coming up this year. I hope it comes out of our committee as it is being talked about now. That is a 5-year program. It begins with $4 billion the first year, $4.5 billion the second, and $5 billion for each of the 3 following years, the remaining 3 years, which will sort of get us back on track.

Do you think that amount of money will be able to improve the water quality in this country faster than going along at 2.4 and pointing a finger at the states?

Mr. RAVAN. Mr. Chairman, clearly, given the needs, if we, in fact, have more money, we can build more plants faster. However, having said all of that, the Congress did, in fact, proceed with the administration in passing the CWA Amendments of 1981, and we all committed to a $2.4 billion level for some period of time.

The CHAIRMAN. I don't say we all. I admit surely Congress passed the President's budget. It was the President's request and the Congress passed it. But that doesn't mean we all committed ourselves to only a 2.4 effort, because a lot of people voted against those budgets year after year.

Mr. RAVAN. I would certainly defer to your judgment on that, Mr. Chairman. No. 1, I wasn't here, but number two, that was my understanding. The point is that, in addition to the money element, there were certain cutbacks in terms of what we would fund and in terms of percentage levels that we would fund. With these changes, the $2.4 billion funded by the Federal Government, fully exercised through the system, would indeed put in place 5 billion dollars' worth of construction each year. This should, over some period of time, as you pointed out, build those facilities needed within the reasonable foreseeable future.

The CHAIRMAN. I have a few particular questions. What you are getting at is, we've shifted the burden so that state and local communities can come up with all of this extra money more easily than the Federal Government could.

But let me get to a couple of particulars, because I know the committee is waiting for some other questions.

New York City admits to discharging 220 million gallons of raw sewage into the Hudson River and surrounding waters every day. The city estimates it will need about $500 million to bring its treatment facilities to secondary treatment. I guess that is the completion of this huge West Side facility that is under construction, that is supposed to take care of the entire West Side of Manhattan.

How can the administration oppose additional funding for construction programs when in this case and many others like it around the country, the facilities could be built faster with more Federal money? They are dumping 220 million gallons of raw sewage every day into the Hudson. Of course, it's not affecting Manhattan too much, because it leaves there immediately and comes down other places, like the Third Congressional District of New Jersey. [Laughter.]

The CHAIRMAN. If they cut the money back, it will take longer to do that. You did say before, if there was more Federal money available, these things could be completed faster, and therefore the water would improve sooner.

Mr. RAVAN. Would you like me to comment, sir?

The CHAIRMAN. No. [Laughter.]

The city of New York is technically, I guess, still in compliance with the Clean Water Act. Maybe they shouldn't be doing the polluting, but I believe they have gone to court, and since there is less money, the court says you may put up to 300 million gallons a day until a certain date, 1987, or so, I guess.

So would you call that being in compliance with the Clean Water Act or not being in compliance with the Clean Water Act, but have a court order staying that?

Mr. RAVAN. I really appreciate the opportunity to comment here, Mr. Chairman. Again this is where hopefully this committee can give me some help. The horns of the dilemma again are simply this is the dominant feature of the Clean Water Act the provision of a construction grant, or is it that you will require cities and industries to be clean to the necessary degree? Which comes first?

The CHAIRMAN. I don't think either comes first. I think they come together. I think when we have such a tremendous bill, what we do is say, "You have to have clean water. You have to have treatment." And you look at the financial situations, the taxing ability, the ability of the communities to pay. If they can do it all themselves, then they don't need Federal help. Then they have a responsibility to do it.

However, if in the costs we look at what their base is and how much they get, I think if we determine that those communities are truly needy, then I believe the Federal Government, with its broad taxing ability, ought to be able to help, and I certainly believe that if we have an agreement, and we say we are going to pay 75 percent, and we say, "We are going to give you a certain amount of Federal money to do something," and then the court says there is a certain date set by which this must be cleaned up. Then halfway through if we say, "Well, we are not going to give you 75 percent. We may give you 55 percent," I understand in the New York situation, 75 percent still stays, but in some areas the percentage is reduced halfway through. Then the money is reduced.

Then don't the local communities have a chance to go back to the court and say they broke their word? "We had this deal, based upon what we could contribute and what they would contribute, and halfway through the ball game, if they stop, we cannot be asked to meet the terms of the agreement when they back out on part of it."

And it's not just New York City. I am saying, in a way, it is the Federal Government's fault. We are the ones cutting back.

Mr. MOLINARI. Will the gentleman yield?

The CHAIRMAN. Briefly, for debate purposes only. The gentleman from New York.

Mr. MOLINARI. In New York City, the logical followup of some of the lawsuits that have been commenced is that consent degrees permit the cities to prolong their construction program, so they would still receive the same amount of Federal dollars, but it would not put a greater burden on the cities.

So you had a longer construction schedule. Whether that's good or bad——

The CHAIRMAN. Which means that it will be a longer time before the effluent from New York stops coming on to the beaches of the Third Congressional District or whatever it may be called at that time.

Mr. MOLINARI. But the question is, how do we really want to go? Do we want to cut it off, or do we want to provide the funding, as you have put it before, that was promised to the municipalities?

The CHAIRMAN. That is what I am getting at. I am just hoping the Congress will try to get back on track, despite the administration's budget proposals, and provide a reasonable amount of money, so we are not saying, "We are going to take care of it, but not so soon."

You know, there is a fairness thing. I don't know whether EPA can get involved in it or not, in this also. New York may discharge all of this raw sewage. I guess EPA won't do anything about it now, because the court has made a decision. They can dump this. And yet in northern New Jersey, which also borders on that same area, many of the cities in the northern part of the State are under a building moratorium because of lack of secondary treatment facilities. So in order not to pollute more, New Jersey has a building stoppage, but New York City can continue to build and expand. And I believe there is a convention center expected to be completed shortly that will add 800,000 gallons per day to the raw sewage put in there.

Does EPA take any kind of action in that, about the unfairness, even economically? One may continue, and the other cannot. Couldn't you go to court and say, "Look, these people are stopping their construction unless they have adequate treatment plants." The other side of the river should, too. It all comes together.

Mr. RAVAN. Mr. Chairman, the discussion here and your remarks are helpful. But it is troublesome, and I am hoping again that you can come to my aid and assistance as national program manager. What you are suggesting is that the fabric of the law is now changing to one of an economic base, whereas before we had a substantial understanding that the fabric of this law was that we would, in fact, clean up the waters of this Nation, based upon the requirements in the act and the simple need for clean water now and in the future.

If we now institutionalize the concept that cleanup is tied to dollars, that makes my life more simple. Right now, I am facing both of the requirements of the act. That is, I am supposed to be clean, but at the same time I'm supposed to provide some amount of money to make that possible for municipalities, not industries.

The next question of equity, Mr. Chairman, is the New York City situation. I certainly want to concur, that New York City discharges a multiple number of discharges that are significantly behind in terms of being clean. It is almost tragic that here we are in 1984, and there are 230 million gallons of sewage discharged into the Hudson River today. That is why we are before the judge, who has taken his action and is now in control of the case. And what he says, we must all do.

The CHAIRMAN. As I say, this goes in in New York and comes down. We have been going by some assumption that big cities are more important that other areas.

Now along the New Jersey shore, the coast, near Asbury Park and Long Branch, the resort industry is the second largest industry in the entire State of New Jersey. It is dependent upon clean water, and I don't know whether you have any surveys of the condition of the ocean water along the northern New Jersey coast or not. I would like to have some of that information if you have it. But I think it's time where people ought not tell some other people, who may live in a suburban or seashore area—"You are not as important as these big cities," as they may just continue to pollute, and you will just have to take it—because the people in our area are not going to take it and will not serve as the toilet for New York City any longer.

I don't imagine you have any plans to take any action on what's happening at the New Jersey shore at this time, or do you?

Mr. RAVAN. Mr. Chairman, as I pointed out, the city of New York is under court order. We have proceeded to the judicial element of our three-tier government and the court has acted in this case. They have put New York City on a cleanup schedule. We could ask that judge to tighten that schedule but it would be his decision, whether or not that should occur.

The CHAIRMAN. Do you anticipate asking that to be done?

Mr. RAVAN. No, sir; not at the present time, because I must have some additional, new, different evidence to present to the judge in order to ask him to change the decision he has already made.

The CHAIRMAN. Will the EPA be able to do a better job in the overall program of cleaning up the waters, if you have $5 billion a year Federal money to work with, than with $2.4 billion?

Mr. RAVAN. Yes, sir. We could do a better job.

The CHAIRMAN. You are certainly in favor of doing a better job. You would like to do a better job, right, of cleaning up the waters?

Mr. RAVAN. Yes, sir.

The CHAIRMAN. Therefore, would you be in favor of a $5 billion authorization, rather than a $2.4?

Mr. RAVAN. No, sir.

The CHAIRMAN. Why not?

Mr. RAVAN. Because I am here today to represent the administration. Our decision historically from 1981 has been clear. What we can afford from a budget point of view is $2.4 billion.

The CHAIRMAN. What you are left with is, you could do a better job if you had the kind of authorization that you had when you came into office, but your program now is to not do as good a job as you were able to do when you came into office.

Mr. RAVAN. No, sir; that's not true. If you will recall, I tried to point out to the committee that with the current level of funding, and with the lower percentage of Federal participation, we would, in fact, be putting in place 5 billion dollars' worth of construction each year. With the adequacy of the construction industry involved here, with the amount of engineers involved, both from the local all the way up to the Federal level, we think that that is an adequate and a prudent level.

The **CHAIRMAN**. You think that. But the fact is, the waters were slowly over 15 years improving, certainly in my whole area—rivers, bay, oceans and inlets—under more funds.

Mr. **RAVAN**. Yes, sir; they are.

The **CHAIRMAN**. No; they are not. In the last couple of years, we are noticing we are getting spots that are getting worse. Certainly it hasn't gone downhill overall. But how you can say things are getting cleaner and cleaner when you are slowing up the program, I don't think the facts will bear that out.

Thank you very much. I appreciate it. I'm sorry to take that much of the committee's time, but it is a very important issue to the people in New Jersey.

Mr. **LEVITAS**. I might point out in light of your questions, because I think there is a piece of arithmetic that fits in here, a city like New York and most of the large cities which are grandfathered in at 75 percent, obviously are going to take a longer period of time to stretch out, because you have fewer funds. As long as they are operating at 75 percent, with the commitments that are already there, the requirements that are already there, you are going to see a longer period of time for construction, because there is less money and more segmented construction.

The **CHAIRMAN**. And reduced money, I might say, therefore, to all of the other places that need it also.

Mr. **LEVITAS**. We will pursue it further.

The **CHAIRMAN**. I thank you very much.

Mr. **LEVITAS**. There is a vote in process on the floor. The Chair will recess the subcommittee for 15 minutes. Then we will resume.

The committee stands in recess.

[Recess.]

Mr. **LEVITAS**. The subcommittee will please come to order.

We will get right back into it. I have a few questions on the first round, and then I will pass it around.

Mr. Ravan, what is the most recent needs survey amount for existing needs for water treatment plants?

Mr. **RAVAN**. Mr. Chairman, let me ask my assistant to hand me my book.

The question you pose, Mr. Chairman, has several answers, depending upon which modifier you use. Let me run it down so you will fully understand my answer.

If you look at the backlog of treatment needs, just trying to buy the total backlogged needs would be for $23.9—for categories I, II, IIIA, IVB—billion trying to look ahead, we estimate $36.9 billion for the existing and proposed treatment needs by the year 2000. That is the number most people try to hang onto. They are saying that, if we would treat and buy the major interceptors out to year 2000, the total bill would be $57.3 billion, or approximately $60 billion.

Now, if we tried to pay for the total backlog needs for the existing population, taking into account all categories of need, it would be $92.6 billion. If we then ask the question, how much of that is eligible for Federal funding, it would be $60.4 billion. There is at the present time, because of the amendments of 1981, a potential for Federal funding of $37.3 billion, annually through 1985, which gets at the reduced allowableness under the act.

Mr. LEVITAS. That figure of $60 billion, approximately.

Mr. RAVAN. Yes, sir.

Mr. LEVITAS. The amount eligible for Federal funding, would it then be a percentage of that that would actually be Federal funds?

Mr. RAVAN. Yes, sir.

Mr. LEVITAS. And that percentage comes out to?

Mr. RAVAN. $37.3.

Mr. LEVITAS. We are focusing today on the problem of enforcement of permits. I mentioned in my opening statement that one of the reasons attributed to the problem, the cost problem, is the lack of resources. Let me just read some statements which have been made by officials of the Agency. We are talking about enforcement now.

When Mrs. Gorsuch testified before the Appropriations Committee in 1983, she said EPA will meet its environmental responsibilities with a smaller budget by focusing resources on statutory responsibilities, simplifying relationships with the State and regulating community, limiting duplication of effort, and pursuing regulatory reform.

The enforcement of EPA is active and forceful. In 1984 the EPA Administrator, Anne Gorsuch Burford, testified with respect to changing priorities and the Clean Water Act, "The resources in the President's budget for the implementation of the Clean Water Act reflect: one, successful implementation of our responsibilities; two, changing funding priorities to support new work required by the law; and three, policy choices that chart the most direct path to clean water progress in 1984."

Your specific predecessor, Mr. Eidsness, said at that same hearing, "With respect to enforcement and compliance, in fact, we have received increases in enforcement and compliance since 1982, both on the industrial and municipal sides. Industrial compliance with final effluent limits is 88 percent, and as the Administrator said, compliance with Public Law 92-500 funded municipal wastewater plants is up 88 percent in 1982 from a low of 71 percent in 1981."

Mrs. Burford then said, "We are going to have cleaner water because this administration has developed new guidelines to control toxics and has a strong commitment to the environment." That is borne out by work in the form of new guidelines, and indeed it will be more work for States, you are quite right.

Mr. Eidsness said, "We have the budget we need. We see the need for federally funded publicly owned treatment works. Eighty-seven percent are consistently meeting permit limitations. That is a high compliance rate. This is a dramatic increase in improvement because of effective enforcement in the last 2 years in the municipal area."

I could go on. I just want to know, do those statements reflect the policy or even the reality, as you now see the program?

Mr. RAVAN. Let me take the two or three categories, Mr. Chairman, that I identified in the testimony.

First of all, with regard to the issuance of permits, which gives us the tool by which we can achieve compliance, I think the facts speak for themselves. We came to you with a supplement budget for 1984 and a further increased level for 1985. We are now saying to you that we will be able to dislodge or completely do away with the backlog of major permits by the end of fiscal 1985.

The second item that I can comment on relates to the issuance of the guidelines that are necessary to make it possible. I think the previous Administrator was talking about being able to issue permits that include not only controls on conventional pollutants, but some controls on toxics and heavy metals as well. I think it stands perhaps as a marked achievement that we are now nearing the conclusion that very, very if laborious process. By the end of this fiscal year 1984, we will have in place the guidelines covered under the consent decree with the NRDC.

Again, it is difficult and tricky to try to deal with a specific number that says I am 88 percent clean or I am 12 percent dirty on any particular day. I don't know specifically what definition the spokesperson may have been using at that point in time. My own concept of how well municipals are doing is that they are consistently about 20 percent out of compliance, which means that they are around 80 percent clean.

Remember that based on the reports that we receive, we have historically been hearing only from those major municipal permittees for whom we have imposed final effluent limits. Our reports historically didn't speak to the interim limit permittee, nor did they speak to that host of permittees who are considered minor. Therefore, one must be careful when one says we are 88 percent clean. I would tend to disagree with that.

Mr. LEVITAS. On page 2 of your statement, Mr. Ravan, you state in the second paragraph that one of your five priority areas is reducing the backlog as far as municipal and nonmunicipal permits. Does your reference to nonmunicipal—are you referring to industrial permits?

Mr. RAVAN. Yes. I am.

Mr. LEVITAS. Yesterday we heard testimony from GAO indicating that one of the major problems is there simply isn't enough resources. On page 12 of your statement you note your current budget request seeks 80 new positions for permit program compliance and enforcement.

I calculate that to be about 11 percent of the full-time positions which were cut from the Water Enforcement Program over the last 2 or 3 years. Now, if that is all you are going to get, then you really don't have enough to deal with enforcement. How are you going to handle this matter of permit issuance as far as the backlog is concerned, because as I look at it, it just doesn't seem to square, particularly in light of your closing comments on page 17 of your statement that the bottom line is the quality of the permits we issue is as important as the quantity.

I would like you to clarify for me, sort of sift through the smoke and so forth, how are you going to do it, because I certainly agree strongly with the idea of quality permits. The idea of just stamping them out at the last minute and rushing them through past the technical level has produced many of the problems we are dealing with today.

If you are going to do a thorough job, it is going to take resources. The 18 positions is better than the way it was going, but really, it is not making much of a dent in the backlog. So how do you reconcile those two?

Mr. RAVAN. Your math is, first of all, correct. And, if that were the end of it, your conclusions would be correct. Let me add to that, however. We did receive in the 1984 amendment, 69 positions or FTE's or full-time equivalent personnel to do permits work. By my calculation, 18 for compliance monitoring and in 69 for permitting in fiscal year 1984 is 87 positions across both years, which, I think, by and large, with the exception of three, went to the regions. Those 87 persons, then, are at the regional level, and should provide substantively an increase of about eight people per region. In addition, our fiscal year 1985 budget request contains 38 new positions, which will be allocated part to issuing permits. Again, these positions will be going to the regions.

The substantive part of your question, however, is how do you do that? The piece that they needed from headquarters is the piece that comes out underneath the guidelines and it coming along quite nicely. By the end of this fiscal year, that element of work should be substantially completed. And I am committing to you that in this fiscal year and by the end of fiscal year 1985, with those resources in place and the new ones I just mentioned, EPA and the States will issue the backlog of major permits, both municipal and industrial.

I do not mean to infer to the committee that those resources have been added to the enforcement element of the program. There has not been a significant addition of resources, and it would be anticipated that the engineer or scientist who develops the permit in the first place in these 2 fiscal years, having completed that task, in these 2 fiscal years, could turn around and be reprogrammed into an element called enforcement; he or she can then go out and check and see whether or not his or her permit is being abided, and, if not, do something about it. That would be the best way to use that segment of resources.

The difference, I think, between what you have heard and what you must see in the future is the will to do that. I am here to say that this administration of this agency at this time has that will and that the message has gone out. So I think that managers have to deal with the level of resources available to them, and that Mr. Ruckelshaus, realizing the need for some new resources in this area, has moved to get them.

Mr. LEVITAS. How did the water program fare overall in the budget this time in terms of what was requested and what you got?

Mr. RAVAN. We didn't do too well, Mr. Chairman. Overall, with the exception of the resources I just mentioned the water program, the resource outlook for water program in 1984 and 1985, is flat. And, when one examines the resources that have been made available in the past versus what are now present and those anticipated in the future the water program remains flat.

One description of that is to say that those resources have been mined, if you will. They have been reprogrammed into other work areas that are more dominant, more pressing. There are some justifications for that, and in some cases I am concerned.

Mr. LEVITAS. Well, the President made a point during his State of the Union Address to talk about the increased funding for EPA that was going to be put into the budget, and while, of course, I welcomed that as a statement of the end of a policy that was going in the opposite direction, I didn't feel it was really the signal of a reversal to the right direction yet; it was just an end of the direction we were going in.

This is my own evaluation given the amount of resources that were present over the last 3 years. But what troubled me as I began to look at the budget was, in areas where you have jurisdiction, those increases are not in any way reflected proportionately or otherwise, that they have been put in—I am not saying more or less important, but certainly the more topical areas today—toxic chemicals, pesticides, hazardous wastes, et cetera.

The tremendous job that faces you, including your new guidelines, the new permits and enforcement, aren't going to get adequate resources. Your resources and your commitment are not on track, is what I am saying, as I look at the budget.

Mr. RAVAN. Mr. Chairman, your analysis of the budget regarding the distribution of the new resources is accurate. The President made a commitment. I think if Mr. Ruckelshaus were here he could show you that, in the totality of the budget for the Agency as a whole, we have had a dramatic reversal. We got the supplemental in 1984. Those new resources are on board. We are not having any difficulty finding people who are qualified to fill the positions, some 600 or so in number.

We have an increased request for resources in 1985. We anticipate receiving those and putting them in place, as you point out, in some of the topical programs. One cannot look at that budget, however, and decide that the same degree of increase has been given to the water programs specifically.

There are seasons and rationales for that. Some people would say that the water programs are "mature." There are two elements of work within the water program that I could point to where this is significant and true, and I can represent these to you this morning. No. 1, the construction grants program is, in large measure, being transferred to the States. There is no question about that. Some 50-plus States and territories now have delegation under that construction grants program.

The second point is that we are, in fact, completing the first round of effluent guidelines. With the completion of that work, we can justify a decreased effort at the headquarters level.

There are some troublesome spots ahead of us, however. If we should get into a prolonged range of protestations and negotiations and court cases with regard to implementing, the BAT guidelines and toxic substance controls, those resources would be used up again.

The second area I am concerned about is one which I wish Chairman Howard, yourself and others would give me some guidance on. We continue to see waivers under the Clean Water Act, and those waivers eat up resources. Section 301(h), for instance, deals with a city that can get a waiver to do less treatment if it discharges into a marine environment.

It takes a lot of resources to review all of these waivers in the water program. So your analysis of the overall budget is correct: those resources went somewhere else. It is an improved picture and

I am very pleased about that. I feel comfortable with the commitments I am making to you with regard to estimating this backlog of permits because I have gone back and checked and checked again. My regional people, who will get resources and must really do that work, tell me they are comfortable and they will meet the commitments.

Mr. Chairman, Ms. Hanmer pointed out something. Let me make sure I make it clear to you.

The 2 numbers I added together, the 69 new resources are for fiscal year 1984 and the 18 or so that you pointed out are for fiscal year 1985. The plus 15 goes to fiscal year 1985, for a total across those 2 years of 87.

Mr. **Levitas**. I have more questions, but I will hold them at this point until later.

The Chair recognizes the gentleman from New York, Mr. Molinari.

Mr. **Molinari**. Mr. Ravan, you have just mentioned section 301(h) waiver applications. Do you have any idea how many were applied for nationwide?

Mr. **Ravan**. Yes, sir, I do. I will submit the specific number, Mr. Molinari, but I believe the number of applications for section 301(h) waivers exceeds 100; 122 comes to mind.

Mr. **Molinari**. I have a list here of regions I through IV, and they are rather numerous. I just wondered what the total amount might have been.

How many of those have been either tentatively or finally approved? Can we get any figures from someone here? Does anyone have them available today?

Mr. **Ravan**. Before today is over, Mr. Molinari, I will get that number to you. It seems the number of approvals is 19 so far, but let me check to make sure that is, indeed, the correct number. It is significantly less than the number of applicants so far, and, in fiscal year 1985, in fact, we have asked for additional resources to try to deal with that, because the number of applications is, growing.

Mr. **Molinari**. I would like to request, Mr. Chairman, that we have furnished to the subcommittee the total number of waiver applications which have been filed with EPA and the status of those: those that may have been denied, those that have been approved, and most importantly the rationale for those that received either tentative or final approval.

Mr. **Ravan**. Yes, sir.

Mr. **Levitas**. Without objection, it is so ordered, and we will make that a part of the record.

[Information received from Mr. Ravan follows:]

301(h) APPLICATIONS AND DECISION STATUS

	Number of applications[1]	Tentative approval	Tentative denial	Final approval	Final denial
1979 applications	69	21	12	4	1
1982 applications	135	3	40	1	16
Total	204	24	52	5	17

[1] After withdrawals.

FACT SHEETS FOR 301(h) DECISION APPROVALS [1]

REGION I

Lynn, MA; S. Essex, MA; Portsmouth, NH; and Rye, NH.

REGION IX

Encino, CA; Goleta, CA; Hyperion, CA; Los Angeles County, CA; Orange County, CA; Oxnard, CA; Monterey, CA; San Diego, CA; Santa Cruz, CA; Honolulu, HI; and Sand Island, HI.

REGION X

Anchorage, AK; Ketchikan, AK; Sitka, AK; Skagway, AK; Whittier, AK; Wrangell, AK; Seattle (Richmond Beach), WA; Seattle (West Point), WA; and Tacoma (Western Slopes), WA.

FACT SHEET: CITY OF LYNN, MASSACHUSETTS—LYNN SEWAGE TREATMENT PLANT

Action:. EPA has tentatively decided to approve the City of Lynn's request for a variance from the secondary treatment requirements for sewage discharged into the Atlantic Ocean.

The Plant:

Serves approximately 113,000 people;

Existing plant treats an average of 19.3 million gallons of sewage per day (mgd);

Effluent discharged 2.9 miles offshore through an outfall at a depth of 30 ft.

The Applicant Proposed the Following Improvements:

Proposed construction of a 25.8 mgd primary treatment plant;

Mass emission rates for suspended solids will decrease from 17,700 pounds per day to 7,600 pounds per day;

Outfall will be replaced and extended a total of 4.3 miles to a depth of 60 ft, improving dilution and transport of effluent away from shore.

Reasons for Tentative Decision to Grant the Variance:

Proposed discharge will not adversely affect water quality, shellfish, fish, and wildlife, and will not interfere with public water supplies or recreational activities;

Reduced potential for bioaccumulation and ecological impacts through increased solids removal and toxics control programs;

Proposed discharge meets other criteria for protecting the marine environment.

Conditions in Tentative Decision:

Revisions of the monitoring program for the discharge;

Revision of schedule of activities to control nonindustrial toxics sources and approval of pretreatment program;

Establishment of schedule for steps to control combined sewer overflows;.

Determination by the National Marine Fisheries Service that the proposed discharge will not affect endangered species under this jurisdiction.

FACT SHEET: SOUTH ESSEX SEWERAGE DISTRICT, MASSACHUSETTS—SOUTH ESSEX SEWAGE TREATMENT FACILITY

Action: EPA has tentatively decided to approve South Essex Sewerage District's request for a variance from the secondary treatment requirements for sewage discharged into the Atlantic Ocean.

The Plant:

Serves approximately 177,000 people;

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[1] Where tentative decision subsequently became final, fact sheet is for final decision.

Existing plant treats an average of 27 million gallons of sewage per day (mgd);

Applicant discharges approximately 37 tons per day of sludge on outgoing tides;

Effluent discharged 1.2 miles offshore through an outfall at a depth of 30 ft.

The Applicant Proposed the Following Improvements:

Mass emission rates for suspended solids will decrease from 96,300 pounds per day to 26,900 pounds per day through elimination of discharge of sludge;

Outfall will be extended to a total of 4.8 miles to a depth of 72 ft improving dilution and transport of effluent away from shore.

Reasons for Tentative Decisions to Grant the Variance:

Proposed discharge will not adversely affect water quality, shellfish, fish, and wildlife, and will not interfere with public water supplies or recreational activities;

Reduced potential for bioaccumulation and ecological impacts through increased solids removal and toxics control program;

Proposed discharge meets other criteria for protecting the marine environment.

Conditions in Tentative Decision:

Revisions of the monitoring program for the discharge;

Revision of schedule of activities to control nonidustrial toxics sources and approval or pretreatment program;

Prohibitions against the discharge of sewage sludge;

Determination by the National Marine Fisheries Service that the proposed discharge will not affect endangered species under their jurisdiction.

FACT SHEET: CITY OF PORTSMOUTH, NEW HAMPSHIRE—PUBLICLY OWNED TREATMENT WORKS

Action: EPA has tentatively decided to approve the Portsmouth, New Hampshire request for a variance from the secondary treatment requirements for sewage discharged into the Piscataqua River Estuary New Hampshire.

The Plant:

Serves approximately 23,000 people;

The Portsmouth system consists of approximately 71 miles of sewers with a primary treatment plant located at Pierce Island. A temporary connection around the plant carries flows in excess of 2 mgd directly to the outfall pipe. The Pierce Island Plant averages 5.53 mgd. An Inhoff tank in Seacrest village treats an additional 0.3 mgd. Both systems discharge to the Piscataqua River Estuary. The Seacrest Village plant will be abandoned and wastewater pumped to Pierce Island. Ten combined sewer overflows also discharge to the Piscataqua River. The State of New Hampshire and City of Portsmouth have initiated a program which will eventually eliminate these overflows.

The Applicant Proposed the Following Improvements:

New primary clarification tanks, anaerobic digesters, sludge handling facilities and conversion of existing primary tanks to choline detention tanks;

The improved primary plant will continue to use the present outfall which is located at a depth of 23.6 meters in an area of swift currents.

Reasons for Tentative Decision to Grant the Variance:

Proposed discharge will not adversely affect water quality, shellfish, fish, and wildlife, and will not interfere with public water supplies or recreational activities;

Portsmouth has proposed a program for control of toxic pollutants. Toxics are not a major problem, however;

Proposed discharge meets other criteria for protecting the marine environment.

Final Approval of the Variance:

An NPDES Permit to discharge from this facility is presently being drafted by the Region;

The permit will contain a schedule for implementation of the non-industrial toxics control program.

FACT SHEET: TOWN OF RYE, NEW HAMPSHIRE—PUBLICLY OWNED TREATMENT WORKS

Action: EPA has issued a final decision and permit approving the Town of Rye's request for a variance from the secondary treatment requirements for sewage discharged into the Atlantic Ocean.

The Plant:

Initial flows of wastewater (primarily of domestic origin) which will be treated at the facility range from 25,000 gallons per day in winter to 50,000 gallons per day in summer;

Effluent disposal systems which will be abandoned consist of an 80-year-old sewer system which discharges untreated sewage to the Atlantic Ocean through three separate outfall pipes;

The Applicant Proposed the Following Improvements:

Proposed construction of a primary wastewater treatment plant consisting of four 25,000 gallon septic tanks and chlorine detention tank;

Separate outfall pipes will be replaced by a single outfall pipe extending 600 feet offshore;

Reasons for Decision to Grant the Variance:

Proposed discharge will not adversely affect water quality, shellfish, fish, and wildlife, and will not interfere with public water supplies or recreational activities;

There are no toxic substances present in the discharge;

Proposed discharge meets other criteria for protecting the marine environment.

FACT SHEET: LEUCADIA COUNTY WATER DISTRICT, CALIFORNIA—ENCINA WATER POLLUTION CONTROL FACILITY

Action: EPA has tentatively decided to approve Leucadia County Water District's request for a variance from the secondary treatment requirements for the Encina, California water pollution control facility for sewage discharged into the Pacific Ocean.

The Plant:

Serves approximately 150,000 people;

Facilities were recently upgraded and expanded;

Proposed discharge will be 22.5 million gallons per day;

Existing diffuser will be modified by utilizing 50 ports that are presently inoperable, in addition to existing ports;

Proposed discharge is advanced primary effluent with 75% supended solids removal.

Reasons for Decision to Grant the Variance:

Proposed discharge will not adversely affect water quality, shellfish, fish, and wildlife, and will not interfere with public water supplies or recreational activities;

Encina has proposed a program for control of toxic pollutants. They also have an approved pretreatment program to enforce all applicable pretreatment requirements.

Proposed discharge meets other criteria for protecting the marine environment.

Conditions in the Tentative Decision:

Development of a revised monitoring program;

State concurrence through joint permit issuance.

FACT SHEET: GOLETA, CALIFORNIA—GOLETA SEWAGE TREATMENT FACILITY

Action: EPA has tentatively decided to approve Goleta's requested variance from the secondary treatment requirements for sewage discharge into the Pacific Ocean.

The Plant:

Serves approximately 66,000 people in the Goleta and Isla Vista Sanitary Districts, the University of California (Santa Barbara), the Santa Barbara Municipal Airport and Santa Barbara County;

Treats an average of 6 million gallons of sewage per day;

Discharges into the Pacific Ocean through a roughly 6,100 ft. long outfall pipe terminating at a depth of 92 ft.

The Applicant Proposed the Following Improvements:

Modifications of the existing primary sedimentation units for chemical addition and restoration to service of existing biofilters;

These modifications will increase removal efficiency of suspended solids and biochemical oxygen demand to meet the California Ocean Plan.

The proposed treatment facilities will remove 75 percent of the suspended solids.

Reasons for Tentative Decision to Grant the Variance:

The proposed discharge will not adversely affect water quality, shellfish, fish, and wildlife public water supplies or recreational activities;

The proposed discharge meets other criteria for protecting the marine environment.

Condition in Tentative Decision:

Revisions of the monitoring program for the discharge;

Revision of schedule of activities to control nonindustrial toxics sources and approval of pretreatment program;

A finding by California of consistency with coastal zone management plant;

Approval of variance by State.

FACT SHEET: CITY OF LOS ANGELES, CALIFORNIA—HYPERION WASTEWATER TREATMENT PLANT

Action: EPA has tentatively decided to approve Los Angeles' requested variance from the secondary treatment requirements for sewage discharged into the Pacific Ocean.

The Plant:

Serves approximately 3.1 million people;

For a total influent sewage flow of 350 million gallons per day (MGD), the existing plant treats 100 mgd at secondary and 250 mgd at primary'

Effluent is discharged 5 miles offshore at a depth of 184 ft.

The Applicant Proposed the Following Improvements:

Proposed treatment facilities consist of increasing secondary treatment capacity from 100 mgd to 150 mgd;

Blended primary and secondary effluent will have 75 percent of suspended solids removed;

Mass emission rates for suspended solids will decrease from 27,000 metric tons per year to 26,000 metric tons per year;

Reasons for Tentative Decision to Grant the Variance:

Proposed discharge will not adversely affect water quality, shellfish, fish, and wildlife, public water supplies or recreational activities;

Reduced potential for bioaccumulation and ecological impacts through increased solids removal and toxics control program;

Proposed discharge meets other criteria for protecting the marine environment.

Conditions in the Tentative Decision:

Revisions of the monitoring program for the discharge;

Revision of schedule of activities to control nonindustrial toxics sources and approval of pretreatment program;

A finding by the California Coastal Commission of consistency with the State's Coastal zone management program;

Determination by the U.S. Fish and Wildlife Service that the proposed discharge will not affect endangered species under their jurisdiction.

Approval of variance by State.

FACT SHEET: LOS ANGELES COUNTY SANITATION DISTRICT CALIFORNIA—JOINT WATER POLLUTION CONTROL PLANT

Action: EPA has tentatively decided to approve Los Angeles County's requested variance from the secondary treatment requirements for sewage discharged into the Pacific Ocean.

The Plant:

Serves approximately 2.8 million people;

Existing plant treats an average of 360 million gallons of sewage per day (mgd) to primary standards;

Effluent discharged 1.7 miles offshore through two outfalls at a depth of 190 ft.

The Applicant Proposed the Following Improvements:

Proposed plant will treat 200 mgd at secondary and 160 mgd at primary;

Blended primary and secondary effluent will have 75 percent of suspended solids removed;

Mass emission rates for suspended solids will decrease from 102,000 metric tons per day to 37,000 metric tons per year;

Mass emission rates for DDT, chromium, lead and zinc will decrease by 80 percent or more in comparison to 1977 levels;

Reasons for Tentative Decision to Grant the Variance:

Proposed discharge will significantly improve water quality, shellfish, fish, and wildlife, and will not interfere with public water supplies or recreational activities;

Reduced potential for bioaccumulation and ecological impacts through increased solids removal and toxics control program;

Proposed discharge meets other criteria for protecting the marine environment.

Conditions in Tentative decision:

Revisions of the monitoring program for the discharge;

Revision of schedule of activities to control nonindustrial toxics sources and approval of pretreatment program;

A finding by the California Coastal Commission of consistency with the State's coastal zone management program;

Determination by the U.S. Fish and Wildlife Service that the proposed discharge will not affect endangered species under their jurisdiction.

Approval of variance by State.

FACT SHEET: MONTEREY REGIONAL WATER POLLUTION CONTROL AGENCY, CALIFORNIA—MONTEREY REGIONAL SEWAGE TREATMENT FACILITY

Action: EPA has tentatively decided to approve the Monterey Regional Water Pollution Control Agency's request for a variance from the secondary treatment requirements for sewage discharged into the Pacific Ocean.

The Plant:

Serves approximately 192,000 people;

Several existing facilities are served under the proposed service area including three municipalities, two sanitation districts, one federal facility, and several private treatment systems;

Effluent disposal systems which will be abandoned consist of three marine outfalls, two river discharges, percolation ponds, a slough discharge and others.

The Applicant Proposed the Following Improvements:

Proposed construction of 20.9 mgd secondary regional treatment plant;

Proposed effluent will have at least 75 percent of suspended solids removed;

Discharges will be replaced by an outfall 7,200 ft long at a depth of 80 ft, improving dilution and transport of effluent away from shore.

Reasons for Tentative Decision to Grant the Variance:

Proposed discharge will not adversely affect water quality, shellfish, fish, and wildlife, and will not interfere with public water supplies or recreational activities;

Proposed discharge meets other criteria for protecting the marine environment.

Conditions in the Tentative Decision:

Revisions of the monitoring program for the discharge;

Revision of schedule of activities to control nonindustrial toxics sources and approval of pretreatment program;

A finding by the California Coastal Commission of consistency with the State's coastal zone management program;

Determination by the U.S. Fish and Wildlife Service that the proposed discharge will not affect endangered species under their jurisdiction.

State concurrence in the variance.

FACT SHEET: SANITATION DISTRICT OF ORANGE COUNTY, CALIFORNIA—JOINT WORKS TREATMENT FACILITIES

Action: EPA has tentatively decided to approve Orange County's requested variance from the secondary treatment requirements for sewage discharged into the Pacific Ocean.

The Plant:

Serves approximately 1.6 million people;

For a total influent sewage flow of 184 million gallons per day, the existing plant treats 46 mgd at secondary and 138 mgd at primary;

Effluent discharged 4.5 miles offshore at a depth of 190 ft.

The Applicant Proposed the Following Improvements:

Proposed treatment facilities consist of an increase of secondary treatment capacity from 46 to 121 mgd;

Blended primary and secondary effluent will have 75 percent of suspended solids removed;

Mass emission rates for suspended solids will decrease from 36,500 metric tons per year to 22,600 metric tons per year;

Reasons for Tentative Decision to Grant the Variance:

Proposed discharge will significantly improve water quality, shellfish, fish, and wildlife, and will not interfere with public water supplies or recreational activities;

Reduced potential for bioaccumulation and ecological impacts through increased solids removal and toxics control programs;

Proposed discharge meets other criteria for protecting the marine environment.

Conditions in the Tentative Decision:

Revisions of the monitoring program for the discharge;

Revision of schedule of activities to control nonindustrial toxics sources and approval of pretreatment program;

A finding by the California Coastal Commission of consistency with the State's coastal zone management program;

Determination by the U.S. Fish and Wildlife Service that the proposed discharge will not affect endangered species under their jurisdiction.

Approval of variance by State.

FACT SHEET: VENTURA REGIONAL COUNTY SANITATION DISTRICT, CALIFORNIA—OXNARD WASTEWATER TREATMENT PLANT

Action: EPA has tentatively decided to approve Ventura Regional County's requested variance from the secondary treatment requirements for sewage discharged into the Pacific Ocean.

The Plant:

Serves approximately 121,000 people;

Treats an average of 25 million gallons of sewage per day (mgd) to primary standards;

Effluent discharged 1.1 mi offshore at a depth of 49 ft.

The Applicant Proposed the Following Improvements:

Operation of recently completed 25 mgd secondary treatment plant;

Proposed plant will treat 23 mgd at secondary and 8 mgd at primary;

Blended primary and secondary effluent will have 75 percent of suspended solids removed;

Reasons for Tentative Decision to Grant the Variance:

Proposed discharge will not adversly affect water quality, shellfish, fish, and wildlife, and will not interfere with public water supplies or recreational activities;

Proposed discharge meets other criteria for protecting the marine environment.

Conditions in the Tentative Decision:

Revisions of the monitoring program for the discharge;

Revision of schedule of activities to control nonindustrial toxics sources and approval of pretreatment program;

A finding by the California Coastal Commission of consistency with the State's coastal zone management plan;

Determination by the U.S. Fish and Wildlife Service that the proposed discharge will not affect endangered species under their jurisdiction.

Approval of variance by State.

FACT SHEET: SAN DIEGO, CALIFORNIA—POINT LOMA SEWAGE TREATMENT FACILITY

Action: EPA has tentatively decided to approve San Diego's requested variance from secondary treatment requirements for sewage discharged into the Pacific Ocean from the Point Loma sewage treatment plant.

The Plant:

Serves more than 1.32 million people in San Diego area and accepts emergency discharges from Tijuana, Mexico;

Treats an average 120 million gallons of sewage per day;

Discharges into the Pacific Ocean through a 12,900 ft outfall pipe terminating at a depth of over 200 ft.

The Applicant Proposed the Following Improvements:

Treatment improvements and plant expansion;

These proposed improvements will allow compliance with the California Ocean Plan;

The proposed treatment plant will remove 75 percent suspended solids.

Reasons for Tentative Decision to Grant the Variance:

The proposed discharge will not adversely affect water quality, shellfish, fish or wildlife, public water supplies or recreational activities;

The proposed discharge meets other criteria for protecting the marine environment.

Conditions in the Tentative Decision:

Revisions in the monitoring program for the discharge;

Revision of schedule of activities to control nonindustrial toxics sources and approval of pretreatment program;

A finding by California of consistency with coastal zone management plan;

Determination by U.S. Fish and Wildlife Service that the proposed discharge will not affect endangered species under their jurisdiction;

Approval of variance by State.

FACT SHEET: CITY OF SANTA CRUZ, CALIFORNIA—SANTA CRUZ SEWAGE TREATMENT FACILITY

Action: EPA has tentatively decided to approve the City of Santa Cruz's request for a variance from the secondary treatment requirements for sewage discharged into the Pacific Ocean.

The Plant:

Serves approximately 77,000 people;

Existing plant treats an average of 8.7 million gallons of sewage per day (mgd);
Effluent discharged 2000 ft offshore through an outfall at a depth of 43 ft;
The Applicant Proposed the Following Improvements:
Proposed effluent will have at least 75 percent of suspended solids consistently removed;
Outfall will be extended to a total of 2.2 miles to a depth of 100 ft, improving dilution and transport of effluent away from shore.
Reasons for Tentative Decision to Grant the Variance:
Proposed discharge will not adversely affect water quality, shellfish, fish, and wildlife, and will not interfere with public water supplies or recreational activities;
Proposed discharge mets other criteria for protecting the marine environment.
Conditions in the Tentative Decision:
Revisions of the monitoring program for the discharge;
Revision of schedule of activities to control nonindustrial toxics sources and approval of pretreatment program;
A finding by the California Coastal Commission of consistency with the State's coastal zone management program;
Determination by the U.S. Fish and Wildlife Service that the proposed discharge will not affect endangered species under their jurisdiction;
State concurrence in the variance.

FACT SHEET: HONOLULU, HAWAII—HONOULIULI SEWAGE TREATMENT FACILITY

Action: EPA has tentatively decided to approve Honolulu's requested variance for biochemical oxygen demand for sewage discharged into Mamala Bay from the Honouliuli sewage treatment plant. EPA has tentatively decided to deny Honolulu's requested variance for the proposed discharge of suspended solids. Therefore, secondary limitations for suspended solids would be required.
The Plant:
Several existing treatment facilities discharging into marine waters and are to discharge into regional Honouliuli treatment plant.
The Applicant Proposed the Following Treatment Facilities:
Construction of the Honouliuli advanced primary Regional facility designed for 25 million gallons per day;
Treatment processes will include influent screening, grit removal, pre-aeration for grease;
Propose to discharge into Mamala Bay through a 8,760 ft. long outfall pipe terminating at a depth of about 200 ft.
Reasons for Tentative Decision to Grant the Variance:
The proposed discharge of biochemical oxygen demand will not adversely affect water quality, shellfish, fish, and wildlife, and will not interfere with public water supplies or recreational activities;
Proposed discharge of biochemical oxygen demand meets other criteria for protecting marine environment.
Conditions in the Tentative Decision:
Revisions of the monitoring program for the discharge;
Revision of schedule of activities to control nonindustrial toxics sources and approval of pretreatment program;
Approval of variance by State.

FACT SHEET: HONOLULU, HAWAII—SAND ISLAND SEWAGE TREATMENT FACILITY

Action: EPA has tentatively decided to approve Honolulu's requested variance from the secondary treatment requirements for sewage discharged into Mamala Bay from the Sand Island sewage treatment plant.
The Plant:
Serves approximately 353,700 residents plus business and resort areas in Honolulu and Waikiki;
Provides advanced primary treatment for an average 68 million gallons of sewage per day;
Discharges through an outfall pipe extending 9,000 feet from shore terminating at a depth of 225 ft.
The Applicant Proposed the Following Improvements:
Cessation of sludge discharge through the outfall.
Reasons for Tentative Decision to Grant the Variance:
The proposed discharge will not adversely affect water quality, shellfish, fish or wildlife, public water supplies or recreational activities;

The proposed discharge meets other criteria for protecting the marine environment.

Conditions in the Tentative Decision:

Revision of the monitoring program for the discharge;

Revision of schedule of activities to control nonindustrial toxics sources and approval of pretreatment program;

Approval of variance by State.

FACT SHEET: ANCHORAGE, ALASKA—JOHN M. ASPLUND SEWAGE TREATMENT FACILITY

Action: EPA has tentatively decided to approve Anchorage's requested variance from the secondary treatment requirements for sewage discharged into Upper Cook Inlet from the city's John M. Asplund sewage treatment plant.

The Plant:

Serves approximately 165,000 people in Anchorage;

Treats an average of 34 million gallons of sewage per day;

Discharges into upper Cook Inlet, a coastal estuary;

Discharges this sewage through a 804 ft. long outfall pipe.

The Applicant Proposed the Following Improvements:

Outfall relocation to deeper water and diffuser improvement.

Reasons for Tentative Decision to Grant the Variance:

The proposed discharge will not adversely affect water quality, shellfish, fish or wildlife, public water supplies or recreational activities;

The proposed discharge meets other criteria for protecting the marine environment.

Conditions in the Tentative Decision:

Revisions of the monitoring program for the discharge;

Revision of schedule of activities to control nonindustrial toxics sources and approval of pretreatment program;

A finding by Alaska of consistency with coastal zone management plan;

Approval of variance by State.

FACT SHEET: CITY OF KETCHIKAN, ALASKA—CHARCOAL POINT SEWAGE TREATMENT FACILITY

Action: EPA has tentatively decided to approve the Ketchikan sewage treatment facility request for a variance from the secondary treatment requirements for sewage discharged into the Gulf of Alaska.

The Plant:

Serves approximately 7,800 people;

Currently discharges untreated wastewater;

Proposed outfall will be 2.6 million gallons per day with no industrial input.

The Applicant Proposed the Following Improvements:

Wastewater screening facility and a deep water outfall and diffuser will be constructed;

Proposed discharge will be to a depth of 110 feet and 450 feet from shore.

Reasons for Tentative Decision to Grant the Variance:

Low mass emission rate of solids, depth of discharge and expected circulation due to tidal currents results in low solids accumulation and thus low potential for impact;

Proposed discharge will not adversely affect water quality, shellfish, fish, and wildlife, and will not interfere with public water supplies or recreational activities;

Proposed discharge meets other criteria for protecting the marine environment.

Conditions in the Tentative Decision:

Development of satisfactory construction schedule for the proposed treatment facility and outfall;

Completion of an industrial user survey;

Submission of an acceptable public education program aimed at control of nonindustrial sources of toxics;

Determination of consistency with Alaska Coastal Zone Management Program;

Certification of compliance with local law;

State concurrence.

FACT SHEET: CITY AND BOROUGH OF SITKA, ALASKA—SITKA SEWAGE TREATMENT FACILITY

Action: EPA has issued a final decision and permit approving the Sitka sewage treatment facility request for a variance from the secondary treatment requirements for sewage discharged into the Gulf of Alaska.

The Plant:

Serves approximately 9,000 people;

Previously discharged untreated sewage from numerous shallow outfalls;

Conventional primary wastewater treatment facility and deep water outfall with a diffuser has been constructed and begun operation;

Proposed discharge will be 1.8 million gallons per day and will have no industrial input.

The Applicant Proposed the Following Improvements:

The proposed discharge will be to a depth of 83 feet and approximately 500 feet from the shore;

Proposed discharge will provide primary treatment.

Reasons for Final Decision to Grant the Variance:

Low mass emission rate of solids, depth of discharge and expected circulation due to tidal currents results in low solids accumulation and thus low potential for impact;

Proposed discharge will not adversely affect water quality, shellfish, fish, and wildlife, and will not interfere with public water supplies or recreational activities;

Proposed discharge meets other criteria for protecting the marine environment.

FACT SHEET: CITY OF SKAGWAY, ALASKA—SKAGWAY SEWAGE TREATMENT FACILITY

Action: EPA has issued a final decision and permit approving the Skagway sewage treatment facility request for a variance from the secondary treatment requirements for sewage discharged into the Gulf of Alaska.

The Plant:

Serves approximately 800 people;

Currently using treatment by fine screening;

Existing outfall, which will be repaired and extended, is currently discharging at a depth of 25 feet;

Proposed discharge will be 0.8 million gallons per day (peak flow) and will have no industrial input.

The Applicant Proposed the Following Improvements:

Outfall will be repaired and extended to a depth of 35 feet and to a distance of approximately 250 feet from the ferry terminal.

Reasons for Final Decision to Grant the Variance:

Low mass emission rate of solids, depth of discharge and expected circulation due to tidal currents results in low solids accumulation and thus low potential for impact;

Proposed discharge will not adversely affect water quality, shellfish, fish, and wildlife, and will not interfere with public water supplies or recreational activities;

Proposed discharge meets other criteria for protecting the marine environment.

FACT SHEET: CITY OF WHITTIER, ALASKA—WHITTIER SEWAGE TREATMENT FACILITY

Action: EPA has issued a final permit and decision approving the Whittier sewage treatment facility request for a variance from the secondary treatment requirements for sewage discharged into the Prince William Sound.

The Plant:

Serves approximately 270 people;

Currently discharging untreated to a tidal lagoon;

Proposed discharge will be .08 million gallons per day and will have no industrial input.

The Applicant Proposed the Following Improvements:

Proposes septic tank discharge with treatment and disposal of resultant sludge;

New outfall and diffuser under construction;

Proposed discharge will be to a depth of 48 feet and 600 feet from shore.

Reasons for Final Decision to Grant the Variance:

Low mass emission rate of solids, depth of discharge and expected circulation due to tidal currents results in low solids accumulation and thus low potential for biological impact;

Proposed discharge will not adversely affect water quality, shellfish, fish, and wildlife, and will not interfere with public water supplies or recreational activities;

Proposed discharge meets other criteria for protecting the marine environment.

FACT SHEET: CITY OF WRANGELL, ALASKA—WRANGELL SEWAGE TREATMENT FACILITY

Action: EPA has issued a final decision and permit approving the Wrangell sewage treatment facility request for a variance from the secondary treatment requirements for sewage discharged into the Zimovia Strait.

The Plant:

Serves approximately 2,000 people;

Currently using treatment by fine screening;

Existing outfall which will be repaired and extended is currently discharging at a depth of 13 feet;

Proposed discharge will be 0.41 million gallons per day (peak flow) and will have no industrial input.

The Applicant Proposed the Following Improvements:

Outfall will be repaired and extended to a depth of 30 feet.

Reasons for Final Decision to Grant the Variance:

Low mass emission rate of solids, depth of discharge and expected circulation due to tidal currents results in low solids accumulation and thus low potential for impact;

Proposed discharge will not adversely affect water quality, shellfish, fish, and wildlife, and will not interfere with public water supplies or recreational activities;

Proposed discharge meets other criteria for protecting the marine environment.

FACT SHEET: MUNICIPALITY OF METROPOLITAN SEATTLE, WASHINGTON—RICHMOND BEACH TREATMENT PLANT

Action: EPA has tentatively decided to approve Seattle's requested variance from the secondary treatment requirements for sewage discharged into Puget Sound from the Richmond Beach plant.

The Plant:

Serves approximately 16,800 people;

Treats an average of 1.7 million gallons of sewage per day;

The Applicant Proposed the Following Improvements:

Outfall will be extended to deeper water and effluent will then be discharged 0.51 mi offshore at a depth of 220 ft improving dilution and transport of effluent away from shore.

Reasons for Tentative Decision to Grant the Variance:

Proposed discharge will not adversely affect water quality, shellfish, fish, and wildlife, public water supplies or recreational activities;

Seattle has approved pretreatment program;

Proposed discharge meets other criteria for protecting the marine environment.

Conditions in the Tentative Decision:

Revisions of the monitoring program for the discharge;

Revision of schedule of activities to control nonindustrial toxics sources;

A finding by Washington State of consistency with coastal zone management plan;

Approval of variance by State.

FACT SHEET: SEATTLE, WASHINGTON—WEST POINT TREATMENT FACILITY

Action: EPA has tentatively decided to approve Seattle's requested variance from the secondary treatment requirements for sewage discharged into Puget Sound from the West Point treatment plant.

The Plant:

Serves approximately 510,000 people;

Treats an average of 125 million gallons of sewage per day;

Discharges through a 3,650 ft long outfall pipe into Puget Sound at a depth of about 200 ft.

The Applicant Proposed the Following Improvements:

Treatment improvements involving chemical addition to increase suspended solids removal, cessation of sludge input from the Renton POTW and combined sewer overflow control.

Reasons for Tentative Decision to Grant the Variance:

The proposed discharge will not adversely affect water quality, shellfish, fish or wildlife, public water supplies or recreational activities;

Seattle has an approved pretreatment program;

The proposed discharge meets other criteria for protecting the marine environment.

Conditions in the Tentative Decision:

Revisions of the monitoring program for the discharge;
Revision of schedule of activities to control nonindustrial toxics sources;
A finding by Washington State of consistency with coastal zone management plan;
Approval of variance by State.

FACT SHEET: CITY OF TACOMA, WASHINGTON—WESTERN SLOPES SEWAGE TREATMENT FACILITY

Action: EPA has tentatively decided to approve the City of Tacoma's request for a variance from the secondary treatment requirements for sewage discharged from the Western Slopes treatment plant into Puget Sound.

The Plant:
Serves approximately 23,000 people;
Existing plant treats an average of 1.4 million gallons of sewage per day (mgd);
Discharges into Tacoma Narrows of Puget Sound, a saline estuary;
Effluent discharged 500 ft offshore through an outfall at a depth of 82 ft.

The Applicant Proposed the Following Improvements:
Addition of a multiport diffuser approximately 51 ft long at a depth of 82–89 ft, improving dilution and transport of effluent away from shore.

Reasons for Tentative Decision to Grant the Variance:
Proposed discharge will not adversely affect water quality, shellfish, fish, and wildlife, and will not interfere with public water supplies or recreational activities;
Proposed discharge meets other criteria for protecting the marine environment.

Conditions in Tentative Decision:
Revisions of the monitoring program for the discharge;
Revision of schedule of activities to control nonindustrial toxics sources and approval of pretreatment program;
A finding by Washington State of consistency with the State's coastal zone management program;
Determination by the U.S. Fish and Wildlife Service that the proposed discharge will not affect endangered species under their jurisdiction;
State concurrence in the variance.

Mr. MOLINARI. Mr. Ravan, one of the problems we have sitting in committee hearings and listening to people representing EPA or other agencies, for that matter, is credibility. I am not questioning your credibility at all, but we have heard in the past, and I think the chairman has alluded to it, that even with reductions the number of personnel would be adequate to do the job. We heard that time and again, and yet we are talking about putting on additional personnel now, which obviously is necessary in order to do the job.

Could we infer from that that the information we had received in the past, that there was adequate personnel, was incorrect?

Mr. RAVAN. Mr. Molinari, I would hesitate, unless I could examine the complete rationale for those statements as to the adequacy of resources. It could depend obviously on what you planned to do that year. Did you plan to do less? Did you know that you could transfer that work to the States? I'm not certain that I could conclude one way or the other, just based upon the statement. I can report to you and do that.

Mr. Ruckelshaus and his team, of which I am a part, looked at the resource base for the Agency, the amount of work that had to be done—not just in water, but in a number of programs—and concluded that the Agency needed a quick and continued infusion of resources, people and dollars.

In one case, we have been blessed by the Congress with some additional resources in a supplemental in 1984, and we are again increasing our request for 1985. That's our conclusion.

Mr. **Molinari**. We have been very pleased, certainly speaking for myself, with the request for additional funding, because it is my own judgment—and only my own judgment—that there was no way we could do the job with the funding levels we have had in the past. I applaud Mr. Ruckelshaus for taking that strong position.

Going on to your testimony on page 13, at the top where you talked about the identification of a specific category of 1,100 major municipal and industrial significant noncompliers, which you intend to target for intensive review and followup this year, you go on to make a rather strong statement, a commitment:

> We are in fact committed to bringing every one of these significant non-compliers back into compliance or take a formal enforcement action by the end of this year.

That certainly appears to be a very, very ambitious goal and one which I think stuck out when I read your testimony last night. I said to the chairman before we started the proceeding today that, "I don't know Mr. Ravan very well, but he is sure sticking his neck out on that statement," and I certainly applaud your attitude.

I just hope that we don't have you back here next year, looking at a substantial number of those not having been brought into compliance.

I guess it would be silly of me to ask the question whether you are sure you are going to meet that goal, because obviously you wouldn't have put it in your testimony. I just wonder how you are going to be able to do it by the end of this fiscal year. It seems to be an incredible goal. Obviously that contradicts the information we have been getting from GAO.

Would you care to comment?

Mr. **Ravan**. Yes, sir. I appreciate that. It is a very ambitious undertaking. However, when I look at the resources available to this Agency and the resources available to the approved States, when I think that they are receiving the very clear message that this work is to be done, when the senior managers within the EPA know that their pay and status depend upon getting this work accomplished, then I think a lot will be accomplished. And I am thinking about the kinds of techniques that can be utilized to bring them into compliance.

Let me say it this way, if those 1,100 demanded court action, if I had to plead those cases before the judge, then no, sir, I would fail, and I know that. But hopefully there will only be a very small proportion, because these people across the country, both industrial and municipal, are folks very much like ourselves. They don't necessarily mean or intend to do wrong—and when they do receive a good, clear signal, they will do the things necessary—everything from very minor adjustments up to and including straightening out their paperwork—so that they can accurately describe what their condition is.

So in every case, it is not a major undertaking to bring someone into compliance.

Mr. **Molinari**. If you came back here a year from today, would you still be using administrative orders? Would that technique be employed, and would that be spelled out as compliance? That is one of the key features that was brought out in GAO testimony, that there has been, in effect, an abjuse of the AO's since noncompliers are listed as compliers once the AO is issued.

What is your position on the use of administrative orders?

Mr. **Ravan**. My attitude toward their proper use is very positive. One must not take an administrative order lightly, neither on our side of the table or that of the permittee.

If one simply issues a piece of paper called an administrative order as a ruse to move a number from one column to another, which now says I am in compliance, that is an abrogation of the system and must be looked at by not only me, but the Inspector General and others.

Mr. **Molinari**. How do you track those administrative orders? Is there a tracking procedure within EPA?

Mr. **Ravan**. Yes, sir, there is.

Mr. **Molinari**. Would you mind telling us how that is done?

Mr. **Ravan**. It is done, Mr. Molinari, by both ourselves and the States. The administrative order, in essence, puts the permittee on a schedule or demands certain items of him. And, by the way, that administrative order is not just a piece of paper between two parties. Although, it does not set a dollar penalty, you are automatically out of compliance and in an enforceable mode when you do not comply with your administrative order.

Once they all issued an administrative order, those major dischargers, are placed in a category of persons that are considered "in compliance." They are in compliance technically, by definition, although they are not necessarily in compliance by looking at their discharge.

If they violate their administrative order, they automatically come into the category that says, "You are now out of compliance. You are a major discharger, and you must now be tracked."

Some other action should now be taken, such as imposing a fine or taking some increased action against the discharger. The tracking system will follow discharges both from a compliance monitoring point of view, and if they come back into my system, which is to say they are now in significant non-compliance, I will track them, and that is the way we keep up with them.

Mr. **Molinari**. Do you have any idea of the number of administrative orders in effect today?

Ms. **Hanmer**. We can give you numbers of issuance, but not how many are still in effect.

Mr. **Ravan**. I don't know how many are in effect. I will get that for you, Mr. Molinari.

Mr. **Molinari**. All right. Would you furnish a list of those to the subcommittee?

Mr. **Ravan**. Yes, sir.

[Information received from Mr. Ravan follows:]

APPROXIMATE NUMBER
OF
NON-RESOLVED ADMINISTRATIVE ORDERS

1980-1983
(by calendar year)

	Major	Minor
1983	442	316
1982	203	173
1981	269	114
1980	364	178
	1278	781

NOTE: These numbers are estimates only. They were obtained from The Great System, and were derived by deducting the total number of AOs recorded as closed out/resolved from the total number of AOs written. Of the total remaining, we are certain that many have been resolved or are inactive, but our records do not indicate exactly how many.

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                    THE GREAT SYSTEM

               ALL NON-RESOLVED AO BY YEAR

                 TABLE OF REGION BY TYPE
          CONTROLLING FOR YR=83 MADI=MAJOR

REGION         TYPE

FREQUENCY|FEDERAL |MUNI     |NON-MUNI|  TOTAL
---------+--------+---------+--------+
01       |       0|       24|       2|     26
---------+--------+---------+--------+
02       |       0|       13|       4|     17
---------+--------+---------+--------+
03       |       0|       31|       7|     38
---------+--------+---------+--------+
04       |       1|       91|      13|    105
---------+--------+---------+--------+
05       |       0|        7|       2|      9
---------+--------+---------+--------+
06       |       1|      173|      32|    206
---------+--------+---------+--------+
07       |       0|        0|       0|      0
---------+--------+---------+--------+
08       |       1|       11|       0|     12
---------+--------+---------+--------+
09       |       0|        7|       0|      7
---------+--------+---------+--------+
10       |       0|        9|      13|     22
---------+--------+---------+--------+
TOTAL            3      366       73     442
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                 THE GREAT SYSTEM

           ALL VIN-RESOLVED AD BY YEAR

             TABLE OF REGION BY TYPE
        CONTROLLING FOR YR=83 MADI=MINOR

REGION       TYPE

FREQUENCY|FEDERAL |MUNI    |NON-MUNI|  TOTAL
---------+--------+--------+--------+
01       |       0|       0|       0|      0
---------+--------+--------+--------+
02       |       0|       1|       2|      3
---------+--------+--------+--------+
03       |       0|      22|      26|     48
---------+--------+--------+--------+
04       |       0|      86|     138|    224
---------+--------+--------+--------+
05       |       0|       2|       0|      2
---------+--------+--------+--------+
06       |       0|      27|       5|     32
---------+--------+--------+--------+
07       |       0|       0|       0|      0
---------+--------+--------+--------+
08       |       0|       0|       1|      1
---------+--------+--------+--------+
09       |       0|       0|       0|      0
---------+--------+--------+--------+
10       |       0|       2|       4|      6
---------+--------+--------+--------+
TOTAL            .      140      176      316
```

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                    THE GREAT SYSTEM

              ALL NON-RESOLVED AD BY YEAR

                 TABLE OF REGION BY TYPE
           CONTROLLING FOR YR=82 MADI=MAJOR

REGION        TYPE

FREQUENCY|FEDERAL |MUNI     |NON-MUNI|  TOTAL
---------+--------+---------+---------+
01       |       0|       23|       4|     27
---------+--------+---------+---------+
02       |       0|        6|      11|     17
---------+--------+---------+---------+
03       |       0|       12|       2|     14
---------+--------+---------+---------+
04       |       0|        6|       8|     14
---------+--------+---------+---------+
05       |       0|       10|       1|     11
---------+--------+---------+---------+
06       |       1|       61|      38|    100
---------+--------+---------+---------+
07       |       0|        0|       0|      0
---------+--------+---------+---------+
08       |       1|        1|       1|      3
---------+--------+---------+---------+
09       |       0|        0|       1|      1
---------+--------+---------+---------+
10       |       0|        1|      15|     16
---------+--------+---------+---------+
TOTAL            2       120        81    203
```

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                     THE GREAT SYSTEM

               ALL NON-RESOLVED SO BY YEAR

                  TABLE OF REGION BY TYPE
           CONTROLLING FOR YR=82 MADI=MINOR

REGION        TYPE

FREQUENCY|FEDERAL |MUNI     |NON-MUNI|  TOTAL
---------+--------+---------+--------+
01       |       0|        0|       1|      1
---------+--------+---------+--------+
02       |       0|       27|      25|     52
---------+--------+---------+--------+
03       |       0|       16|      45|     61
---------+--------+---------+--------+
04       |       0|        3|       2|      5
---------+--------+---------+--------+
05       |       0|        0|       0|      0
---------+--------+---------+--------+
06       |       2|        2|       1|      5
---------+--------+---------+--------+
07       |       0|        0|       0|      0
---------+--------+---------+--------+
08       |       0|        0|       0|      0
---------+--------+---------+--------+
09       |       0|        0|       0|      0
---------+--------+---------+--------+
10       |       2|        0|      47|     49
---------+--------+---------+--------+
TOTAL            4        48      121     173
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                THE GREAT SYSTEM

          ALL NON-RESOLVED AD BY YEAR

             TABLE OF REGION BY TYPE
       CONTROLLING FOR YR=81 MADI=MAJOR

REGION        TYPE

FREQUENCY|FEDERAL |MUNI    |NON-MUNI|  TOTAL
---------+--------+--------+--------+
01       |      0 |      5 |      3 |      8
---------+--------+--------+--------+
02       |      0 |     32 |     12 |     44
---------+--------+--------+--------+
03       |      0 |     20 |      8 |     28
---------+--------+--------+--------+
04       |      0 |     17 |      4 |     21
---------+--------+--------+--------+
05       |      0 |     17 |      2 |     19
---------+--------+--------+--------+
06       |      0 |     85 |     36 |    121
---------+--------+--------+--------+
07       |      0 |      3 |      3 |      6
---------+--------+--------+--------+
08       |      0 |      7 |      2 |      9
---------+--------+--------+--------+
09       |      0 |      1 |      0 |      1
---------+--------+--------+--------+
10       |      0 |      0 |     12 |     12
---------+--------+--------+--------+
TOTAL           .      187       82      269
```

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                    THE GREAT SYSTEM

              ALL NON-RESOLVED AO BY YEAR

                TABLE OF REGION BY TYPE
          CONTROLLING FOR YR=81 MADI=MINOR

REGION       TYPE

FREQUENCY|FEDERAL |MUNI    |NON-MUNI|  TOTAL
---------+--------+--------+--------+
01       |       0|       0|       0|      0
---------+--------+--------+--------+
02       |       1|       7|      16|     24
---------+--------+--------+--------+
03       |       1|      37|      10|     48
---------+--------+--------+--------+
04       |       0|       4|      24|     28
---------+--------+--------+--------+
05       |       0|       0|       0|      0
---------+--------+--------+--------+
06       |       0|       5|       4|      9
---------+--------+--------+--------+
07       |       0|       0|       0|      0
---------+--------+--------+--------+
08       |       0|       0|       0|      0
---------+--------+--------+--------+
09       |       0|       0|       0|      0
---------+--------+--------+--------+
10       |       0|       0|       5|      5
---------+--------+--------+--------+
TOTAL            2       53       59      114
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                    THE GREAT SYSTEM

             ALL NON-RESOLVED 80 BY YEAR

                TABLE OF REGION BY TYPE
           CONTROLLING FOR YR=80 MADI=MAJOR

REGION        TYPE

FREQUENCY|FEDERAL |MUNI     |NON-MUNI|  TOTAL
---------+--------+---------+---------+
01       |       0|       11|        4|      15
---------+--------+---------+---------+
02       |       0|       27|        6|      33
---------+--------+---------+---------+
03       |       2|       32|       14|      48
---------+--------+---------+---------+
04       |       0|       36|        7|      43
---------+--------+---------+---------+
05       |       0|       20|       20|      40
---------+--------+---------+---------+
06       |       3|       66|       75|     144
---------+--------+---------+---------+
07       |       0|        2|        8|      10
---------+--------+---------+---------+
08       |       0|        8|        0|       8
---------+--------+---------+---------+
09       |       0|        1|        0|       1
---------+--------+---------+---------+
10       |       1|        4|       17|      22
---------+--------+---------+---------+
TOTAL            6      207       151      364
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                      THE GREAT SYSTEM

                ALL NON-RESOLVED AD BY YEAR

                   TABLE OF REGION BY TYPE
           CONTROLLING FOR YR=80 MADI=MINOR

REGION         TYPE

FREQUENCY|FEDERAL |MUNI     |NON-MUNI|  TOTAL
---------+--------+---------+--------+
01       |       0|        0|       4|      4
---------+--------+---------+--------+
02       |       1|        1|       8|     10
---------+--------+---------+--------+
03       |       2|       15|      41|     58
---------+--------+---------+--------+
04       |       0|       14|      63|     77
---------+--------+---------+--------+
05       |       0|        0|       3|      3
---------+--------+---------+--------+
06       |       2|        5|       6|     13
---------+--------+---------+--------+
07       |       0|        0|       5|      5
---------+--------+---------+--------+
08       |       0|        0|       3|      3
---------+--------+---------+--------+
09       |       0|        1|       0|      1
---------+--------+---------+--------+
10       |       0|        0|       4|      4
---------+--------+---------+--------+
TOTAL            5       36      137     178
```

Attached is a list of all AOs for FY 84. Each AO is broken down by month, region and state.

There is one incorrectly coded facility listed under the AOs for Region II, Long Island Duck Farmers Coop under the month of April 1984. The effective date should be 2/29/84. The change has been penciled in and the AO should be counted for February 1984.

Explanation of the violation codes is supplied on the attached page.

GREAT SYSTEM VIOLATION CODES

330	FAILURE TO SUBMIT DMR
332	INADEQUATE DMR
350	FAILURE TO SUBMIT NONCOMPLIANCE NOTICE
500	EXCEEDED EFFLUENT LIMITS
501	INADEQUATE MONITORING
502	DISCHARGED WITHOUT VALID PERMIT
503	IMPROPER O & M
504	UNAUTHORIZED BY-PASS
552	UNAUTHORIZED DISCHARGE
600	OTHER
601	VIOLATION OF PREVIOUS ORDER
602	FAILURE TO MEET 77/07/01
603	SECTION 404 VIOLATION (DREDGE & FILL)
604	PRETREATMENT VIOLATION
605	REQUIRED TO COMPLETE A MUNICIPAL COMPLIANCE PLAN (MCP)
608	SECTION 308 REQUEST FOR INFORMATION
609	ESTABLISHES INTERIM LIMITS
610 /	ESTABLISHES COMPLIANCE SCHEDULE
611	VIOLATION OF SCHEDULE ESTABLISHED BY PERMIT
612	FAILED TO APPLY FOR PERMIT
613	ESTABLISHES CONSTRUCTION SCHEDULE
614	DMR QUALITY ASSURANCE (QA)
615	COMPOSIT CORRECTION PGM. (CCP)
616	
617	
618	

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                                               THE GREAT SYSTEM                          8:59 SATURDAY, MARCH 24, 1984   1

                                    ALL AOS          FOR FY84 BY MONTH

-------------------------------------------- ACTION=AO   YRMO=8310   REGION=01   STATE=RI -------------------------------------------
                                                                    (Effective) (Received) (Compliance)                 (Violations)
 OBS   REGION             NAME              PERMIT      DOCKET        DATE      RDATE      CDATE     SIC      TYPE      V1     V2     V3    V4    V5

  1      01    AMERICAN HOECHST CORP.    RI0000132    84-01       831028                          2865   NON-MUNI   500    001

-------------------------------------------- ACTION=AO   YRMO=8310   REGION=02   STATE=NJ -------------------------------------------

 OBS   REGION             NAME              PERMIT        DOCKET         DATE     RDATE   CDATE   SIC     TYPE   V1     V2     V3    V4    V5

  2      02    CHERRY HILL TOWNSHIP   NJ0025046   CWA-II-83-51   831024                        4952   MUNI   500   600

-------------------------------------------- ACTION=AO   YRMO=8310   REGION=03   STATE=PA -------------------------------------------

   OBS  REGION                  NAME                    PERMIT        DOCKET        DATE    RDATE   CDATE   SIC    TYPE   V1    V2   V3   V4   V5

    3     03     ALLEGHENY COUNTY SAN.AUTH.,ALC   PA0025984   III-84-0020W   831017                     4952   MUNI   604
    4     03     BETHLEHEM AUTHORITY--WASTEWATER  PA0026042   III-84-0030W   831018                     4952   MUNI   604

-------------------------------------------- ACTION=AO   YRMO=8310   REGION=03   STATE=VA -------------------------------------------

   OBS  REGION                  NAME                    PERMIT        DOCKET        DATE    RDATE   CDATE   SIC    TYPE   V1    V2   V3   V4   V5

    5     03     UPPER OCCOQUAN SEWAGE AUTH-REG   VA0024988   III-83-0720W   831011                     4952   MUNI   604

-------------------------------------------- ACTION=AO   YRMO=8310   REGION=03   STATE=WV -------------------------------------------

   OBS  REGION  NAME                                    PERMIT        DOCKET        DATE    RDATE   CDATE   SIC    TYPE   V1    V2    V3   V4   V5

    6     03     GLENDALE SEWAGE DISPOSAL PLANT   WV0020036   III-83-0730W   831027                     4952   MUNI   330
    7     03     RIVESVILLE, TOWN OF              WV0020052   III-83-0740W   831027                     4952   MUNI   330
    8     03     CLAY, TOWN OF,-UPPER CLAY #1     WV0020079   III-83-0850W   831027                     4952   MUNI   330
    9     03     GLASGOW , TOWN OF                WV0020265   III-83-0830W   831027                     4952   MUNI   330
   10     03     PADEN CITY PRIMARY WASTE TREAT   WV0026613   III-83-0840W   831027                     4952   MUNI   330
   11     03     BUFFALO CREEK REGIONAL WWTP      WV0038351   III-83-0820W   831021                     4952   MUNI   500   600
   12     03     ELIZABETH TOWN OF                WV0061505   III-83-0750W   831027                     4952   MUNI   330

-------------------------------------------- ACTION=AO   YRMO=8310   REGION=04   STATE=FL -------------------------------------------

 OBS  REGION  NAME                               PERMIT          DOCKET          DATE    RDATE    CDATE   SIC    TYPE        V1    V2    V3    V4   V5

 13      04    SANDESTIN UTILITY CO INC        FL            81-012(W889)   831025                           NON-MUNI   502
 14      04    SANDESTIN UTILITY CO INC        FL            84-012(W889)   831025                           NON-MUNI   502
 15      04    MADISON WWTP                    FL0020281   84-010(WWHP)   831025                   4952   MUNI       602
 16      04    INDIAN SHORES WWTP              FL0021482   84-002(WWHP)   831018                   4952   MUNI       500
 17      04    ATLANTIC BEACH STP              FL0023914   84-007(WWHP)   831021                   4952   MUNI       602   600
 18      04    REGENCY LAKES STP-REG UTIL CO   FL0027301   84-013(W889)   831027                   4952   NON-MUNI   500
 19      04    CHIPLEY WATER & SEWER SYSTEM    FL0027570   84-009(WWHP)   831025                   4952   MUNI       602
 20      04    ESCAMBIA CNTY-AVONDALE WTP      FL0031401   84-008(WWHP)   831020                   4952   MUNI       500   602   600
 21      04    FLEETWOOD WWP                   FL0052305   84-017(W889)   831027                   6515   NON-MUNI   502   600
 22      04    ALLIGATOR UTIL-PUNTA GORDA      FL0034473   84-001(W889)   831013   840221          4941   NON-MUNI   500   502



                                               THE GREAT SYSTEM                          8:59 SATURDAY, MARCH 24, 1984   2
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                                          THE GREAT SYSTEM                    0150 SATURDAY, MARCH 24, 1984   2

                               ALL AOS          FOR FY84 BY MONTH

----------------------------------------- ACTION=AO   YRMO=8310   REGION=04   STATE=FL -----------------------------------------

  OBS  REGION            NAME                PERMIT      DOCKET        DATE   RDATE  CDATE  SIC     TYPE     V1   V2   V3  V4  V5

  23     04    JAX ELEC-ST JOHNS RV #1&#2  FL0037869  84-011(WBBB)  831021                   4911  NON-MUNI  500  600

----------------------------------------- ACTION=AO   YRMO=8310   REGION=04   STATE=KY -----------------------------------------

OBS    REGION      NAME        PERMIT        DOCKET          DATE     RDATE     CDATE     SIC      TYPE      V1      V2     V3     V4     V5

24       04     AUBURN STP   KY0021202    84-006(WHBB)     831018                          4952     MUNI      500

----------------------------------------- ACTION=AO   YRMO=8310   REGION=06   STATE=TX -----------------------------------------

 OBS    REGION      NAME        PERMIT         DOCKET        DATE      RDATE      CDATE      SIC        TYPE         V1       V2     V3     V4     V5

 25       06     AMINTECH    TX0053815     VI-83-008     831013                            2821      NON-MUNI      500

----------------------------------------- ACTION=AO   YRMO=8310   REGION=10   STATE=ID -----------------------------------------

   OBS   REGION        NAME            PERMIT          DOCKET         DATE     RDATE    CDATE    SIC    TYPE    V1     V2   V3    V4    V5

   26      10    WEISER, CITY OF   ID0020290   X83-10-03309   831017                         4952   MUNI   504

----------------------------------------- ACTION=AO   YRMO=8311   REGION=01   STATE=MA -----------------------------------------
November
   OBS   REGION   NAME                               PERMIT      DOCKET    DATE     RDATE   CDATE   SIC    TYPE   V1     V2   V3   V4   V5

   27      01     SOUTHBRIDGE STP                  MA0100901   84-03    831101                      4952   MUNI   604
   28      01     PALMER                           MA0101168   84-04    831101                      4952   MUNI   604
   29      01     MILLERS FALLS VILLAGE            MA0101516   84-02    831103                      4952   MUNI   604

----------------------------------------- ACTION=AO   YRMO=8311   REGION=01   STATE=ME -----------------------------------------

  OBS     REGION       NAME         PERMIT        DOCKET      DATE       RDATE      CDATE      SIC      TYPE      V1      V2     V3     V4     V5

  30        01     BANGOR PAF    ME0100781     84-05      831123                           4952     MUNI      604

----------------------------------------- ACTION=AO   YRMO=8311   REGION=03   STATE=PA -----------------------------------------

   OBS  REGION  NAME                               PERMIT      DOCKET             DATE   RDATE  CDATE  SIC   TYPE  V1    V2  V3  V4  V5

   31     03    UPPER MORELAND-HATBORO SEWAGE     PA0025976   III-84-016DW   831110                4952  MUNI  604
   32     03    ALLENTOWN CITY AUTHORITY-WASTE    PA0026000   III-83-090DW   831110                4952  MUNI  604
   33     03    ERIE SEWER AUTH.                  PA0026301   III-83-077DW   831107                4952  MUNI  604
   34     03    BUTLER AREA SEWER AUTH-WTP PLN    PA0026697   III-83-9-VR    831123                4952  MUNI  500
   35     03    BUTLER AREA SEWER AUTH-WTP PLN    PA0026697   III-84-018DW   831123                4952  MUNI  604
   36     03    MORRISVILLE BOROUGH MUN AUTH-S    PA0026701   III-84-023DW   831128                4952  MUNI  604
   37     03    POTTSTOWN BORO COUNCIL-WWTP,TW    PA0026786   III-84-026DW   831123                4952  MUNI  604
   38     03    GREATER HAZELTON SEWAGE TREAT"    PA0026921   III-83-076DW   831110                4952  MUNI  604
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                                         THE GREAT SYSTEM                         8:59 SATURDAY, MARCH 24, 1984    3

                                ALL AOS          FOR FY84 BY MONTH

-------------------------------------------- ACTION=AO   YRMO=8311   REGION=03   STATE=PA --------------------------------------------

  OBS  REGION  NAME                             PERMIT      DOCKET          DATE    RDATE  CDATE  SIC   TYPE  V1    V2  V3  V4  V5

  59     03    DELAWARE CTY REGL WTR QUALITY    PA0027103   III-84-009DW    831123                4952  MUNI  604
  60     03    LEBANON CITY AUTHORITY-SEWAGE    PA0027316   III-84-026DW    831123                4952  MUNI  604
  61     03    NEWCASTLE SANITARY AUTHORITY--   PA0027511   III-83-081DW    831110                4952  MUNI  604
  62     03    KISKI VALLEY WTR POLL.CONTROL    PA0027626   III-84-025DW    831123                4952  MUNI  604
  63     03    UPPER GWYNEDD-TOWAMENCIN MUN.A   PA0039004   III-84-027DW    831123                4952  MUNI  604
  64     03    LANCASTER AREA SEWER AUTHORITY   PA0042269   III-84-011DW    831118                4952  MUNI  604

-------------------------------------------- ACTION=AO   YRMO=8311   REGION=03   STATE=VA --------------------------------------------

  OBS  REGION  NAME                           PERMIT       DOCKET         DATE   RDATE  CDATE  SIC   TYPE       V1   V2   V3  V4  V5

  65     03    CSX RAILROAD COMPANY           VA           III-84-015DW   831121                     NON-MUNI   603
  66     03    EDWARD LUNN TULL               VA           III-84-010DW   831109                     NON-MUNI   603
  67     03    SMITHFIELD PACKING CO          VA0002879    III-84-001VW   831123               2011  NON-MUNI   500  350
  68     03    RIVANNA AUTH-MOORES CREEK      VA0025518    III-84-012DW   831118               4952  MUNI       604

-------------------------------------------- ACTION=AO   YRMO=8311   REGION=04   STATE=FL --------------------------------------------

  OBS  REGION  NAME                             PERMIT      DOCKET          DATE    RDATE  CDATE  SIC   TYPE       V1   V2   V3  V4  V5

  69     04    REICHHOLD CHEMICALS INC          FL          84-030(WSSB)    831117                      NON-MUNI   502
  70     04    MANATEE COUNTY BOARD OF CTY CM   FL          84-036(LWR)     831125                      NON-MUNI   502
  71     04    BEN HILL GRIFFIN CITRUS CO       FL0001201   84-029(WSSB)    831110                2033  NON-MUNI   500
  72     04    PANAMA CITY BEACH STP            FL0021912   84-022(WMHP)    831104                4952  MUNI       602  600
  73     04    SARASOTA -STP                    FL0024791   84-014(WMPP)    831108                4952  MUNI       599
  74     04    LAKE WALES STP                   FL0026379   84-016(WMRP)    831110                4952  MUNI       500  601
  75     04    BREVARD CNTY-SO BEACHES WWTP     FL0026735   84-023(WMHP)    831114                4952  MUNI       502
  76     04    BREVARD CNTY-SO PATRICK WWTP     FL0026743   84-024(WMHP)    831114                4952  MUNI       502
  77     04    PLANTATION ISLES-STP             FL0027367   84-004(WMHP)    831102                4952  MUNI       602
  78     04    LAKELAND-STP                     FL0027405   84-015(WMRP)    831104                4952  MUNI       502
  79     04    PLANTATION-STP 1                 FL0027928   84-005(WMRP)    831103                4952  MUNI       602
  80     04    TARPON SPRINGS STP               FL0030806   84-003(WMRP)    831108                4952  MUNI       500  332
  81     04    DELEON SHORES UTIL CO            FL0033146   84-026(WSSB)    831104                4952  NON-MUNI   600
  82     04    CROWN COLONY-DELRAY BEACH        FL0034871   84-020(WSSB)    831104                6513  NON-MUNI   500

-------------------------------------------- ACTION=AO   YRMO=8311   REGION=04   STATE=KY --------------------------------------------

  OBS  REGION  NAME                             PERMIT      DOCKET          DATE    RDATE  CDATE  SIC    TYPE       V1   V2   V3  V4  V5

  83     04    ADDINGTON BROS MINING-ELDRIDGE   KY0053022A  VI-83-752       831122                1211   NON-MUNI   500
  84     04    KY DHR-DANVILLE YOUTH DEV        KY0033901   84-019(WSSB)    831116                8063   NON-MUNI   500  332

-------------------------------------------- ACTION=AO   YRMO=8311   REGION=05   STATE=MI --------------------------------------------

  OBS   REGION          NAME            PERMIT         DOCKET         DATE     RDATE    CDATE    SIC    TYPE   V1     V2   V3   V4   V5

  85     05     WAYNE CO.-WYANDOTTE     MI0021156   V-W-84-AO-02     831121                      4952   MUNI   601




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------------------------------------------ ACTION=AO   YRMO=8311   REGION=05   STATE=OH ------------------------------------------

  OBS  REGION       NAME              PERMIT       DOCKET        DATE   RDATE  CDATE  SIC   TYPE   V1    V2    V3    V4   V5

  66    05    BEDFORD-CITY OF     OH0028080   V-W-84-AO-04   831129                4952  MUNI   500   605
  67    05    NORWALK CITY OF     OH0052604   V-W-84-AO-03   831129                4952  MUNI   500   605
  68    05    BUCYRUS-CITY OF     OH0052022   V-W-84-AO-01   831102                4952  MUNI   602   601   605

------------------------------------------ ACTION=AO   YRMO=8311   REGION=06   STATE=AR ------------------------------------------

 OBS  REGION  NAME                  PERMIT      DOCKET      DATE    RDATE   CDATE   SIC    TYPE        V1    V2    V3   V4   V5

  69    06    TAYLOR, CITY OF       AR0020060   VI-84-011   831130                  4952   MUNI        500   350
  70    06    ALMA, CITY OF         AR0021008   VI-84-901   831107                  4952   MUNI        604
  71    06    HUMPET CORP           AR0022429   VI-84-009   831129                  3354   NON-MUNI    500   330
  72    06    CARTHAGE, CITY OF     AR0033715   VI-84-002   831130                  4952   MUNI        502

------------------------------------------ ACTION=AO   YRMO=8311   REGION=06   STATE=LA ------------------------------------------

 OBS  REGION  NAME                            PERMIT      DOCKET       DATE   RDATE  CDATE  SIC   TYPE       V1   V2   V3   V4   V5

  73    06    SOUTHERN PACIFIC TRANSPORTATIO  LA          VI-84-002    831118                     NON-MUNI   502  600
  74    06    LOUISIANA POWER & LIGHT-LITTLE  LA0003191   VI-83-185    831103               4911  NON-MUNI   500
  75    06    NATCHITOCHES, CITY OF           LA0020079   VI-83-192    831107               4952  MUNI       500  503
  76    06    USA-FORT POLK                   LA0032221   VI-83-189    831121               9711  FEDERAL    552
  77    06    THIBODAUX, CITY OF              LA0032964   VI-84-005    831107               4952  MUNI       500
  78    06    ST JOHN THE BAPTIST PARISH SD   LA0036487   VI-83-181    831121               4952  MUNI       500  605
  79    06    RUSTON, CITY OF (NORTHSIDE)     LA0036323   VI-84-701    831115               4952  MUNI       500
  80    06    TERREBONNE PARISH POLICE JURY   LA0040207   VI-84-700    831107               4952  MUNI       500
  81    06    ALEXANDRIA, CITY OF (HUDSON RL  LA0041009   VI-84-005    831109               4952  MUNI       604  601
  82    06    SLIDELL, CITY OF (PLANT #1)     LA0067171   VI-83-188    831102               4952  MUNI       503  500  552
  83    06    SLIDELL, CITY OF (PLANT #2)     LA0067180   VI-83-187    831102               4952  MUNI       500  332  503  552
  84    06    SLIDELL, CITY OF (PLANT #3)     LA0067188   VI-83-751    831102               4952  MUNI       500
  85    06    CLARK ACQUISITION INC.          LA0051993   VI-84-1001   831121               2911  NON-MUNI   500  601

------------------------------------------ ACTION=AO   YRMO=8311   REGION=06   STATE=OK ------------------------------------------

   OBS  REGION              NAME                  PERMIT      DOCKET      DATE   RDATE  CDATE  SIC   TYPE  V1   V2   V3  V4  V5

   86     06    MANNFORD, CITY OF (AERATED LAGO  OK0022888   VI-83-144   831107                4952  MUNI  500  350
   87     06    MCALESTER, CITY OF (WEST PLANT)  OK0026093   VI-83-750   831117                4952  MUNI  500
   88     06    MUSKOGEE, CITY OF-WATER POLL'N   OK0029131   VI-83-755   831121                4952  MUNI  500
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------------------------------------------ ACTION=AO   YRMO=8311   REGION=06   STATE=TX ------------------------------------------

 OBS  REGION  NAME                              PERMIT      DOCKET      DATE    RDATE  CDATE  SIC   TYPE       V1   V2   V3   V4  V5

  89    06    BUCKLEY OIL AND CHEMICAL CO       TX          VI-84-001   831121                      NON-MUNI   502
  90    06    SAN ANTONIO, CITY OF (RILLING     TX0021580   VI-84-014   831109                4952  MUNI       500  503
  91    06    TERRELL, CITY OF (KINGS CREEK)    TX0022527   VI-83-950   831107                4952  MUNI       604
  92    06    BRA (WACO REGIONAL WTP #0002)     TX0020506   VI-84-004   831121                4952  MUNI       604
  93    06    SAN ANTONIO, CITY OF (LEON CRE    TX0052639   VI-84-015   831109                4952  MUNI       500  503
  94    06    SAN ANTONIO, CITY OF (SALADO C    TX0052647   VI-84-016   831109                4952  MUNI       503  500
  95    06    SHIPTECH                          TX0053015   VI-84-008   831116                2821  NON-MUNI   500
  96    06    GREENVILLE, CITY OF               TX0055611   VI-83-190   831110                4952  MUNI       500  503  501
  97    06    BRA (TEMPLE-BELTON REGIONAL)      TX0068378   VI-84-003   831109                4952  MUNI       604  601
  98    06    DENKA CHEMICAL CORP-HOUSTON       TX0088609   VI-83-183   831116                2822  NON-MUNI   500

------------------------------------------ ACTION=AO   YRMO=8311   REGION=08   STATE=SD ------------------------------------------

    OBS   REGION        NAME              PERMIT      DOCKET    DATE     RDATE    CDATE    SIC    TYPE   V1    V2   V3   V4   V5

     99     08     VERMILLION, CITY OF   SD0020061   83-13     831117                     4952   MUNI   500
    100     08     WATERTOWN, CITY OF    SD0023370   83-14     831117                     4952   MUNI   500
    101     08     HURON, CITY OF        SD0023434   83-15     831117                     4952   MUNI   500

------------------------------------------ ACTION=AO   YRMO=8311   REGION=09   STATE=AZ ------------------------------------------

    OBS  REGION              NAME                  PERMIT     DOCKET     DATE   RDATE  CDATE  SIC   TYPE  V1   V2   V3  V4  V5

    102    09    YUMA                   YUMA CITY  AZ0020290  IX-FY84-1  831118                4952  MUNI  503  500

------------------------------------------ ACTION=AO   YRMO=8311   REGION=10   STATE=AK ------------------------------------------

 OBS  REGION             NAME              PERMIT        DOCKET          DATE    RDATE   CDATE   SIC       TYPE       V1    V2   V3   V4   V5

 103     10     KODIAK KING CRAB INC    AK0000493    X83-10-04309    831128                    2091    NON-MUNI    500

------------------------------------------ ACTION=AO   YRMO=8311   REGION=10   STATE=ID ------------------------------------------

   OBS   REGION        NAME           PERMIT         DOCKET          DATE     RDATE    CDATE    SIC     TYPE    V1      V2     V3      V4     V5

   104     10    KETCHUM, CITY OF   ID0020281    X83-09-10309    831108                      4952    MUNI    500     330
   105     10    STANLEY, CITY OF   ID0020885    X83-11-01309    831128                      4952    MUNI    504     330    503     330

DOL------------------------------------------ ACTION=AO   YRMO=8312   REGION=01   STATE=MA ------------------------------------------

  OBS   REGION   NAME                             PERMIT      DOCKET    DATE      RDATE   CDATE   SIC    TYPE   V1    V2    V3   V4   V5

  106     01     NEW BEDFORD WTP                  MA0100781   85-06     831230                    4952   MUNI   502   503
  107     01     NORTHAMPTON MUNI TREAT PLANT     MA0101818   86-08     831229                    4952   MUNI   500





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------------------------------------------ ACTION=AO  YRMO=8312  REGION=01  STATE=ME ------------------------------------------

OBS  REGION          NAME                    PERMIT     DOCKET    DATE    MDATE  CDATE  SIC   TYPE   V1    V2  V3  V4  V5

108    01    KENNEBUNK SO-SOUTHWAY RD STP   ME0100277   84-07    831230                4952  MUNI   500

------------------------------------------ ACTION=AO  YRMO=8312  REGION=02  STATE=NY ------------------------------------------

    OBS  REGION             NAME                  PERMIT     DOCKET    DATE   MDATE  CDATE  SIC   TYPE  V1   V2  V3  V4  V5

    109    02    AUBURN (C) SEWAGE TREATMENT PL  NY0021903  II-83-41  831221              4952  MUNI  604

------------------------------------------ ACTION=AO  YRMO=8312  REGION=03  STATE=DE ------------------------------------------

    OBS  REGION             NAME                  PERMIT       DOCKET      DATE  MDATE  CDATE  SIC   TYPE  V1   V2  V3  V4  V5

    110    03    WILMINGTON,CITY OF;WILMINGTON  DE0020320  III-83-067DW  831227              4952  MUNI  604

------------------------------------------ ACTION=AO  YRMO=8312  REGION=03  STATE=PA ------------------------------------------

   OBS  REGION  NAME                          PERMIT       DOCKET      DATE  MDATE  CDATE  SIC   TYPE  V1   V2  V3  V4  V5

   111    03    READING,CITY OF-FRITZ ISLAND -  PA0026549  III-84-029DW  831213              4952  MUNI  604
   112    03    EAST NORRITON-PLYMOUTH JOINT S  PA0026816  III-84-022DW  831213              4952  MUNI  604
   113    03    VALLEY FORGE SEWER AUTHORITY    PA0043974  III-84-024DW  831213              4952  MUNI  604

------------------------------------------ ACTION=AO  YRMO=8312  REGION=03  STATE=WV ------------------------------------------

  OBS  REGION           NAME                PERMIT       DOCKET      DATE   MDATE  CDATE   SIC   TYPE       V1   V2   V3   V4  V5

  114    03    FMC CORP INORGANIC CHEM DIV  WV0005444  III-84-030DW  831228        840128  2812  NON-MUNI  558
  115    03    MONONGAH, TOWN OF            WV0027324  III-84-021DW  831205                4952  MUNI      504  532  503

------------------------------------------ ACTION=AO  YRMO=8312  REGION=04  STATE=FL ------------------------------------------

OBS  REGION  NAME                            PERMIT     DOCKET          DATE   MDATE  CDATE   SIC   TYPE       V1   V2   V3   V4   V5

116    04    BAY COUNTY WASTE TRTMNT-PANAMA  FL0002631  84-037(WSB)    831206         841231  4952  NON-MUNI  500  610
117    04    ORLANDO-IRL N WILSON STP        FL0022144  84-021(WWPP)   831209         870331  4952  MUNI      611  610  609
118    04    UNION OIL JAX I-10 TRUCKSTOP-W  FL0022578  84-043         831229         880401  5541  NON-MUNI  500  601
119    04    CARDINAL VILLAGE MHP            FL0023574  84-052         831229         841230  7033  NON-MUNI  610  500  601
120    04    PINELLAS CO MC CROSS BAYOU STP  FL0028605  84-032(WWPP)   831212         850601  4952  MUNI      611  610  609
121    04    PINELLAS-MCKAY CREEK STP        FL0029011  84-039(WWPP)   831209         861101  4952  MUNI      611  610  609
122    04    LAKE CITY STP                   FL0029948  84-033(WWPP)   831207         840601  4952  MUNI      611  502  610  609
123    04    PERRY STP                       FL0026387  84-038(WWPP)   831209         850301  4952  MUNI      500  610  609
124    04    CENTURY UTIL-W PALM BEACH       FL0035769  84-058(WSB)    831220         880331  4952  NON-MUNI  611  500
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------------------------------------------ ACTION=AO   YRMO=8312   REGION=04   STATE=KY ------------------------------------------

   OBS  REGION  NAME                            PERMIT     DOCKET           DATE    RDATE  CDATE   SIC   TYPE  V1   V2   V3   V4   V5

   125    04    CORBIN STP                      KY0020133  84-002(MWRP)     831221         840615  4952  MUNI  601  604  610
   126    04    MAYSVILLE STP                   KY0020257  84-004(MWRP)     831221         840615  4952  MUNI  604  611  601  610
   127    04    SHELBYVILLE STP                 KY0020427  84-049(MWRP)     831221         840615  4952  MUNI  604  601  611  610
   128    04    VERSAILLES STP                  KY0020621  84-050(MWRP)     831221         840615  4952  MUNI  604  601  611  610
   129    04    PARIS STP                       KY0021059  846(MWRP)        831221         840615  4952  MUNI  604  601  611  610
   130    04    RICHMOND-DREAMING CREEK STP     KY0022845  84-048(MWRP)     831221         840615  4952  MUNI  604  601  611  610
   131    04    HARRODSBURG-STP                 KY0027421  84-043(MWRP)     831221         840615  4952  MUNI  611  601  606
   132    04    HINDMAN-STP                     KY0027445  84-018(MWRP)     831229         841101  4952  MUNI  503  350  610  609
   133    04    PRINCETON STP                   KY0028401  84-037(MWRP)     831221         840601  4952  MUNI  604  601  611  610

------------------------------------------ ACTION=AO   YRMO=8312   REGION=06   STATE=AR ------------------------------------------

   OBS  REGION  NAME                            PERMIT     DOCKET       DATE    RDATE  CDATE   SIC   TYPE  V1   V2   V3   V4   V5

   134    06    NORTH LITTLE ROCK, CITY OF (FI  AR0020320  AI-83-608    831208                 4952  MUNI  500  605  600
   135    06    SEARCY, CITY OF                 AR0021601  VI-84-702    831213                 4952  MUNI  500
   136    06    BLYTHEVILLE, CITY OF (FACILITY  AR0022560  VI-83-711    831210         830501  4952  MUNI  600
   137    06    PINE BLUFF, CITY OF (BOYDS POI  AR0033316  VI-83-106    831214                 4952  MUNI  500  605
   138    06    PINE BLUFF, CITY OF (ARSENAL P  AR0033324  VI-83-105    831214                 4952  MUNI  500  605
   139    06    PINE BLUFF, CITY OF (PORT PLAN  AR0033332  VI-84-018    831214                 4952  MUNI  500  605
   140    06    PINE BLUFF SEWER SYSTEM         AR0033341  VI-84-017    831214                 4952  MUNI  500  605
   141    06    CONWAY, CITY OF (STONE DAM CK   AR0033390  VI-83-177    831212                 4952  MUNI  500  605
   142    06    CONWAY, CITY OF (STONE DAM CK   AR0033399  VI-84-006    831212                 4952  MUNI  500  601
   143    06    EL DORADO, CITY OF (LAGOON #1)  AR0033723  VI-84-401    831223                 4952  MUNI  600
   144    06    HARRISON, CITY OF               AR0034321  VI-84-902    831202                 4952  MUNI  604

------------------------------------------ ACTION=AO   YRMO=8312   REGION=06   STATE=LA ------------------------------------------

OBS   REGION            NAME                    PERMIT      DOCKET      DATE     RDATE   CDATE   SIC    TYPE  V1    V2    V3    V4   V5

145     06    SHREVEPORT CITY OF (LUCAS)   LA0041394   VI-84-907   831206                    4952   MUNI  604
146     06    HARAHAN, CITY OF             LA0043000   VI-84-008   831213                    4952   MUNI  500   350   600

------------------------------------------ ACTION=AO   YRMO=8312   REGION=06   STATE=NM ------------------------------------------

     OBS  REGION            NAME                  PERMIT     DOCKET     DATE    RDATE  CDATE  SIC   TYPE  V1   V2   V3   V4   V5

     147    06    LAS CRUCES, CITY OF       --? NM0023311  VI-84-019  831223                4952  MUNI  500  601  600

------------------------------------------ ACTION=AO   YRMO=8312   REGION=06   STATE=OK ------------------------------------------

   OBS  REGION  NAME                             PERMIT     DOCKET      DATE    RDATE  CDATE  SIC   TYPE      V1   V2   V3   V4   V5

   148    06    U S POLLUTION CONTROL INC        OK         VI-84-006   831208                     NON-MUNI  552  600
   149    06    LAWTON, CITY OF-LAWTON STP       OK0035246  VI-83-037   831216               4952  MUNI      500  503
   150    06    CANADIAN PUBLIC WORKS AUTHORIT   OK0035297  VI-84-012   831214               4952  MUNI      350




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------------------------------------------- ACTION=AO  YRMO=8312   REGION=06   STATE=TX ---------------------------------------------

 OBS  REGION  NAME                            PERMIT      DOCKET       DATE    RDATE  CDATE   SIC   TYPE       V1   V2   V3  V4  V5

 151    06    LAKE CITIES MUNICIPAL UTIL AUT  TX0020354  VI-83-180    831207                  4952  MUNI       500  600
 152    06    TRA (TEN MILE CREEK)            TX0022811  VI-83-187    831206                  4952  MUNI       500  605
 153    06    AMARILLO, CITY OF (RIVER ROAD)  TX0023801  VI-84-008    831209                  4952  MUNI       604  601
 154    06    MERCER COUNTY WCID #0005        TX0054201  VI-84-001    831208                  4952  NON-MUNI   502
 155    06    AUBREY, CITY OF                 TX0056588  VI-84-003    831223                  4952  MUNI       330
 156    06    MONTGOMERY, CITY OF             TX0066693  VI-84-005    831209                  4952  NON-MUNI   502
 157    06    DEVERS, CITY OF                 TX0071910  VI-84-008    831212                  4952  MUNI       330
 158    06    TEXAS MUNICIPAL POWER AG-GIBBO  TX0074418  VI-84-023    831214                  4911  NON-MUNI   600  592
 159    06    CIBOLO CREEK MUN AUTH-REDEL S   TX0077232  VI-84-008    831220          840301  4952  MUNI       500  600

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------------------------------------------- ACTION=AO  YRMO=8401   REGION=02   STATE=NY ---------------------------------------------

 OBS  REGION  NAME                            PERMIT      DOCKET       DATE    RDATE  CDATE   SIC   TYPE       V1   V2   V3  V4  V5

 160    02    HUDSON FALLS (V) SEWAGE TREATM  NY0029055  II-83-39     840131                  4952  MUNI       601
 161    02    BEACON (C) WASTE TREATMENT PLA  NY0025976  II-83-46     840126          840531  4952  MUNI       500  604
 162    02    TUPPER LAKE (V) SEWAGE TREATME  NY0029939  II-83-42     840131                  4952  MUNI       601
 163    02    WASSAIC DEV CENTER              NY0099848  II-83-44     840105                  8063  NON-MUNI   330

------------------------------------------- ACTION=AO  YRMO=8401   REGION=03   STATE=PA ---------------------------------------------

 OBS  REGION  NAME                            PERMIT      DOCKET         DATE    RDATE  CDATE   SIC   TYPE  V1   V2   V3  V4  V5

 164    03    CANONSBURG-HOUSTON JOINT AUTH   PA0026841  III-84-038DW   840105          840630  4952  MUNI  604  610
 165    03    CITY OF JOHNSTOWN               PA0026034  III-84-041DW   840105          840630  4952  MUNI  604  610
 166    03    UPPER MERION TWP. AUTH-TROUT R  PA0026131  III-84-045DW   840120          840315  4952  MUNI  604  610
 167    03    WASHINGTON-EAST WASHINGTON JOI  PA0026212  III-84-032DW   840105          840630  4952  MUNI  604  610
 168    03    LOWER BUCKS COUNTY JT. MUN. AU  PA0026450  III-84-048DW   840120          840420  4952  MUNI  500  610
 169    03    SCRANTON SEWER AUTH.            PA0026492  III-84-039DW   840105          840630  4952  MUNI  604  610
 170    03    SUNBURY CITY MUN AUTH-WWTP TRT  PA0026557  III-84-037DW   840105          840630  4952  MUNI  604  610
 171    03    WEST CHESTER BOROUGH-GOOSE CRE  PA0027031  III-84-033DW   840105          840330  4952  MUNI  604  610
 172    03    DELAWARE CTY REGL WTR QUALITY   PA0027103  III-84-047DW   840120          840320  4952  MUNI  500  610
 173    03    NEW KENSINGTON CITY MUNICIPAL   PA0027111  III-84-019DW   840105          840731  4952  MUNI. 604  610
 174    03    GRTR POTTSVILLE SEWER AUTH HAI  PA0043885  III-84-031DW   840105          840630  4952  MUNI  604  610
 175    03    MAIDENCREEK TOWNSHIP AUTHORITY  PA0070271  III-84-044DW   840105          840330  4952  MUNI  604  610

------------------------------------------- ACTION=AO  YRMO=8401   REGION=04   STATE=FL ---------------------------------------------

 OBS  REGION  NAME                          PERMIT     DOCKET          DATE    RDATE  CDATE   SIC   TYPE       V1   V2   V3   V4  V5

 176    04    CITY OF MONTICELLO            FL         84-056          840113         850901        NON-MUNI   502  610  500
 177    04    DADE CITY STP                 FL0020273  84-057(WWRP)    840131                 4952  MUNI       500  610  609
 178    04    SHEPARD VANS                  FL0023582  84-059(WSSS)    840130                 7538  NON-MUNI   612  502
 179    04    MELBOURNE-BEACHSIDE STP       FL0028703  84-025(WWRP)    840103         860101  4952  MUNI       502  613  609
 180    04    SIMMONS MATTRESS COMPANY      FL0033413  84-054(WSSS)    840104                 2515  NON-MUNI   612  502
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---------------------------------------- ACTION=AO   YRMO=8401   REGION=04   STATE=KY ----------------------------------------

   OBS   REGION        NAME            PERMIT          DOCKET          DATE    RDATE   CDATE    SIC    TYPE   V1    V2    V3   V4   V5

   181     04     GEORGETOWN WTP    KY0020150    84-051(WRP)      840103           841030   4952   MUNI   611   610

---------------------------------------- ACTION=AO   YRMO=8401   REGION=06   STATE=AR ----------------------------------------

   OBS  REGION  NAME                                PERMIT      DOCKET       DATE    RDATE  CDATE   SIC   TYPE  V1    V2    V3    V4    V5

   182    06    ALMA, CITY OF                       AR0021466   VI-84-025   840116                  4952  MUNI  500   504   503   601
   183    06    DE QUEEN, CITY OF                   AR0021733   VI-84-914   840130          840315  4952  MUNI  604
   184    06    CAMDEN, CITY OF                     AR0022365   VI-84-911   840109          840131  4952  MUNI  604   610
   185    06    PINE BLUFF, CITY OF (BOYDA PNT      AR0033316   VI-84-910   840117          840317  4952  MUNI
   186    06    JONESBORO, CITY OF                  AR0035034   VI-84-407   840131          850801  4952  MUNI  500   609   605
   187    06    JONESBORO, CITY OF                  AR0035034   VI-84-705   840130          840302  4952  MUNI  500   601

---------------------------------------- ACTION=AO   YRMO=8401   REGION=06   STATE=LA ----------------------------------------

   OBS  REGION  NAME                                PERMIT      DOCKET       DATE    RDATE  CDATE   SIC   TYPE  V1    V2    V3    V4    V5

   188    06    BREAUX BRIDGE, TOWN OF              LA0033014   VI-84-021   840120          840301  4952  MUNI  500   501   350
   189    06    JEFFERSON PARISH, (WEST NAPOLE      LA0040771   VI-84-403   840130          840701  4952  MUNI  500   601   605
   190    06    GRETNA, CITY OF                     LA0041262   VI-84-024   840116          840216  4952  MUNI  500   332   503

---------------------------------------- ACTION=AO   YRMO=8401   REGION=06   STATE=NM ----------------------------------------

   OBS  REGION  NAME                                PERMIT      DOCKET       DATE    RDATE  CDATE   SIC   TYPE  V1    V2    V3    V4    V5

   191    06    SANTA FE, CITY OF (SILER RD ST      NM0022284   VI-84-703   840103          840801  4952  MUNI  500   609   610
   192    06    SANTA FE, CITY OF (AIRPORT RD       NM0022292   VI-84-704   840103          840801  4952  MUNI  500   609   610

---------------------------------------- ACTION=AO   YRMO=8401   REGION=06   STATE=OK ----------------------------------------

OBS   REGION   NAME                               PERMIT      DOCKET       DATE    RDATE   CDATE    SIC    TYPE   V1    V2    V3    V4   V5

193     06     GUTHRIE, CITY OF                   OK0027715   VI-84-710    840130          851001   4952   MUNI   500   609   610
194     06     ARDMORE, CITY OF (SW STP)          OK0030406   VI-84-708    840130          870201   4952   MUNI   500   609   610
195     06     ARDMORE, CITY OF (NE STP)          OK0030414   VI-84-709    840130          870201   4952   MUNI   500   609   610

---------------------------------------- ACTION=AO   YRMO=8401   REGION=06   STATE=TX ----------------------------------------

   OBS  REGION  NAME                                PERMIT        DOCKET       DATE    RDATE  CDATE   SIC   TYPE       V1    V2    V3   V4   V5

   196    06    CITY OF CACTUS                      TX            VI-84-005   840131          840302        NON-MUNI   802
   197    06    PORT ARTHUR, CITY OF (MAIN)         TX0047589     VI-84-915   840130          840229  4952  MUNI       604   601   610
   198    06    WESLACO CITY OF                     TX0052787     VI-84-027   840116                  4952  MUNI       500   610
   199    06    LEWISVILLE, CITY OF                 TX0052497     VI-84-904   840111          840430  4952  MUNI       604   610
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------------------------------------------ ACTION=AO   YRMO=8401   REGION=08   STATE=SD -----------------------------------------

   OBS   REGION          NAME             PERMIT     DOCKET    DATE     RDATE   CDATE    SIC    TYPE   V1    V2   V3   V4   V5

   200     08    HOT SPRINGS- CITY OF   SD0022918   84-01    840124            840430   4952   MUNI   610

------------------------------------------ ACTION=AO   YRMO=8402   REGION=01   STATE=MA -----------------------------------------

  OBS  REGION  NAME                               PERMIT     DOCKET   DATE   RDATE  CDATE    SIC   TYPE       V1   V2   V3   V4   V5

  201    01    ROSEMAN SILVER CO INC              MA0025925  84-14   840223                3914  NON-MUNI  500  610
  202    01    WEBSTER D.P.W.                     MA0100439  84-11   840208         840701  4952  MUNI      613  610
  203    01    DUDLEY SEWER DEPT                  MA0100706  84-12   840208         860701  4952  MUNI      609  604  611  610
  204    01    SPRINGFIELD-BONDI ISLAND STP       MA0101613  84-09   840203         840930  4952  MUNI      604
  205    01    CHARLES RIVER PCD                  MA0102598  84-13   840217         840417  4952  MUNI      500  503

------------------------------------------ ACTION=AO   YRMO=8402   REGION=01   STATE=RI -----------------------------------------

   OBS   REGION          NAME           PERMIT      DOCKET    DATE     RDATE   CDATE    SIC    TYPE   V1    V2    V3    V4   V5

   206     01     WEST WARWICK WPCF   RI0100153   84-10    840207            840330   4952   MUNI   500   503   610

------------------------------------------ ACTION=AO   YRMO=8402   REGION=02   STATE=NY -----------------------------------------

  OBS  REGION  NAME                               PERMIT      DOCKET     DATE   RDATE  CDATE   SIC   TYPE       V1   V2   V3  V4  V5

  207    02    SCOTT PAPER CO                     NY0004050   II-84-04   840222        840401  2621  NON-MUNI  500  611
  208    02    NIAGARA COUNTY SEWER DIST #1       NY0027979   II-84-01   840222                4952  MUNI      604

------------------------------------------ ACTION=AO   YRMO=8402   REGION=03   STATE=PA -----------------------------------------

  OBS  REGION             NAME                    PERMIT        DOCKET        DATE   RDATE  CDATE   SIC   TYPE  V1   V2   V3  V4  V5

  209    03   ADAMSTOWN BOROUGH AUTHORITY OF  PA0021865  III-84-035DN  840223        840530  4952  MUNI  604  610

------------------------------------------ ACTION=AO   YRMO=8402   REGION=03   STATE=WV -----------------------------------------

  OBS  REGION  NAME                              PERMIT       DOCKET        DATE   RDATE  CDATE  SIC   TYPE  V1   V2   V3   V4  V5

  210    03   GARY SEWAGE TRETMENT PLANT, CI   WV0020044   III-84-049DN  840207                4952  MUNI  501  503
  211    03   MCMECHEN, CITY OF                WV0020141   III-84-058DN  840228                4952  MUNI  501
  212    03   CHESAPEAKE MUNICIPAL SEWAGE TR   WV0024708   III-84-056DN  840228                4952  MUNI  550  501
  213    03   ALDERSON, TOWN OF                WV0020851   III-84-055DN  840227                4952  MUNI  550  501  503
  214    03   COWEN PUBLIC SERVICE DISTRICT    WV0037397   III-84-037DN  840227                4952  MUNI  501
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------------------------------------------- ACTION=AO   YRMO=8402   REGION=04   STATE=FL -----------------------------------------

OBS  REGION  NAME                             PERMIT       DOCKET          DATE    RDATE  CDATE    SIC   TYPE       V1   V2   V3   V4   V5

215    04    CITY OF HOLLYWOOD                FL           84-063(WWP)     840206         840601         NON-MUNI   604  610
216    04    CITY OF FORT LAUDERDALE          FL           84-064(WWP)     840206         840601         NON-MUNI   604
217    04    BROWARD COUNTY                   FL           84-065(WWP)     840207         840601         NON-MUNI   604
218    04    US GYPSUM JAX PLT                FL0001333    84-052(NSS)     840210                  3275  NON-MUNI   612  502
219    04    GOLD KIST POULTRY LIVE OAK       FL0001465    84-041(NSS)     840203                  2016  NON-MUNI   500  610
220    04    MIAMI-VIRGINIA KEY STP           FL0024805    84-046(WWP)     840215                  4952  MUNI       500
221    04    JAX SUBURBAN UTIL-ROYAL LAKES    FL0026701    84-058(NSS)     840201                  4952  NON-MUNI   500  501  610
222    04    SPACIOUS TRAILER PARK,INC        FL0032271    84-051(NSS)     840210                  7519  NON-MUNI   612  502
223    04    FLEETWOOD MHP                    FL0032309    84-050(NSS)     840210                  6515  NON-MUNI   612  502
224    04    PRODUCE TERM OF JAX              FL0033405    84-043(NSS)     840210                  5031  NON-MUNI   612  502
225    04    ORANGE-CO OF FL LABOR CAMP       FL0034517    84-044(NSS)     840210                  2037  NON-MUNI   612  502  330
226    04    BENTON WOOD MHP                  FL0035068    84-059(NSS)     840224                  6515  NON-MUNI   612  502
227    04    LOXAHATCHEE RV REG WWTP&WEFL     FL0038669    84-062(WWP)     840223         840716   4952  MUNI       611  609
228    04    KEYS FISHERIES-MARATHON          FL0035196    84-054(NSS)     840216                  5146  NON-MUNI   612  502
229    04    BELCHER OIL-PALMETTO             FL0036056    84-067(NSS)     840216                  5171  NON-MUNI   612
230    04    BELCHER OIL-MIAMI                FL0036064    84-057(NSS)     840221                  5171  NON-MUNI   612  502

------------------------------------------- ACTION=AO   YRMO=8402   REGION=04   STATE=KY -----------------------------------------

OBS  REGION  NAME                             PERMIT       DOCKET          DATE    RDATE  CDATE    SIC   TYPE       V1   V2   V3   V4   V5

231    04    RUSSELLVILLE STP                 KY0020877    84-044(WWP)     840210         840615   4952  MUNI       601  604
232    04    LEXINGTON-WEST HICKMAN STP       KY0021500    84-040(WWP)     840208         840615   4952  MUNI       601  604
233    04    CHIPPER RIDGE CORP-LOUISVILLE    KY0025071    83-326(NSS)     840207                  4952  NON-MUNI   332
234    04    WHEELWRIGHT STP                  KY0028789    84-040(WWP)     840217         850131   4952  MUNI       330  501  503  610  609
235    04    CARDINAL MHP                     KY0034817    83-269(NSS)     840207                  6515  NON-MUNI   332
236    04    WAVERLY SANITATION FAC           KY0034916    83-344(NSS)     840207                  4952  NON-MUNI   332
237    04    BOONE-THE COUNTRY CLUB GARDEN    KY0034617    83-273(NSS)     840210                  6513  NON-MUNI   330

------------------------------------------- ACTION=AO   YRMO=8402   REGION=05   STATE=IL -----------------------------------------

  OBS   REGION         NAME               PERMIT          DOCKET          DATE     RDATE    CDATE    SIC    TYPE    V1    V2   V3   V4   V5

  238     05     HINSDALE-BURR RIDGE     IL0022586     V-W-84-A0-06     840210             840730    4952   MUNI    604

------------------------------------------- ACTION=AO   YRMO=8402   REGION=05   STATE=IN -----------------------------------------

  OBS  REGION                NAME                      PERMIT       DOCKET          DATE    RDATE  CDATE    SIC   TYPE       V1   V2   V3  V4  V5

  239    05     ANACONDA-ERICSON, WIRE& CABLE     IN0002372    V-W-84-AI-08    840216                  3357  NON-MUNI   614  608
  240    05     CITY OF CHARLESTON                IN0020508    V-W-84-AI-13    840216                  4952  MUNI       614  608
  241    05     UNION CITY MUNICIPAL STP          IN0020982    V-W-84-AI-23    840223                  4952  MUNI       614  608
  242    05     SALEM MUNICIPAL STP               IN0021440    V-W-84-AI-09    840216                  4952  MUNI       614  608
  243    05     STARLITE CORPORATION              IN0021750    V-W-84-AI-07    840216                  3471  NON-MUNI   614  608
  244    05     HAMMOND MUNICIPAL STP             IN0023060    V-W-84-AI-12    840216                  4952  MUNI       614  608
  245    05     REDKEY MUNICIPAL STP              IN0024406    V-W-84-AI-21    840204                  4952  MUNI       614  608
  246    05     SOUTH BEND MUNICIPAL STP          IN0023520    V-W-84-AI-14    840216         840501   4952  MUNI       604
  247    05     WARSAW MUNICIPAL STP              IN0024405    V-W-84-AI-16    840217                  4952  MUNI       614  608
  248    05     LAPORTE MUNICIPAL STP             IN0025577    V-W-84-AI-24    840223         840501   4952  MUNI       604  610
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 OBS  REGION  NAME                            PERMIT      DOCKET          DATE    RDATE  CDATE   SIC   TYPE       V1   V2   V3  V4  V5

 249    05    MISHAWAKA MUNICIPAL STP         IN0024660   V-W-84-AO-19    840221         840501  4952  MUNI       658  610
 250    05    LAFAYETTE MUNICIPAL STP         IN0032468   V-W-84-AO-18    840216                 4952  MUNI       614  608
 251    05    LAFAYETTE MUNICIPAL STP         IN0032468   V-W-84-AO-15    840217         840501  4952  MUNI       658
 252    05    COLUMBUS MUNICIPAL STP          IN0032573   V-W-84-AO-22    840224         840501  4952  MUNI       654
 253    05    ELWOOD MUNICIPAL STP            IN0032719   V-W-84-AO-35    840221         840501  4952  MUNI       604
 254    05    EVANSVILLE W MUNICIPAL STP      IN0032956   V-W-84-AO-27    840227                 4952  MUNI       614  608
 255    05    SPEEDWAY MUNICIPAL STP          IN0032972   V-W-84-AO-25    840223         840501  4952  MUNI       654  610
 256    05    EVANSVILLE E MUNICIPAL STP      IN0033073   V-W-84-AO-27    840227                 4952  MUNI       614  608
 257    05    CONRAIL DIESEL TERMINAL         IN0050717   V-W-84-AO-11    840216                 3743  NON-MUNI   614  608

------------------------------------------ ACTION=AO   YRMO=8402   REGION=05   STATE=MI ------------------------------------------

 OBS  REGION          NAME                 PERMIT      DOCKET         DATE   RDATE  CDATE   SIC   TYPE       V1   V2   V3   V4   V5

 258    05    ROBINSON MFG PLATING CO  MI0000825   V-W-84-AO-18   840217                3471  NON-MUNI   614  608
 259    05    MASON WWTP               MI0020435   V-W-84-AO-09   840209         840331 4952  MUNI       611  500  610
 260    05    GREENBEE CO. WD. 2       MI0022977   V-W-84-AO-26   840227         840430 4952  MUNI       608  500  506
 261    05    PAW PAW LAKE WWTP        MI0023779   V-W-84-AO-28   840227                4952  MUNI       608  500  614  338

------------------------------------------ ACTION=AO   YRMO=8402   REGION=06   STATE=AR ------------------------------------------

 OBS  REGION  NAME                                PERMIT      DOCKET       DATE   RDATE  CDATE   SIC   TYPE  V1   V2   V3   V4  V5

 262    06    FAYETTEVILLE, CITY OF               AR0020010   VI-83-756    840216        870301  4952  MUNI  609  610
 263    06    SILOAM SPRINGS, CITY OF             AR0020273   VI-84-906    840213        840315  4952  MUNI  608
 264    06    BENTONVILLE, CITY OF                AR0022403   VI-84-920    840213        840301  4952  MUNI  604
 265    06    BLYTHEVILLE, CITY OF (FACILITY      AR0022578   VI-84-805    840228                4952  MUNI  500  604  605
 266    06    BLYTHEVILLE, CITY OF (FACILITY      AR0022586   VI-84-020    840228                4952  MUNI  500

------------------------------------------ ACTION=AO   YRMO=8402   REGION=06   STATE=LA ------------------------------------------

 OBS  REGION          NAME              PERMIT      DOCKET       DATE   RDATE  CDATE   SIC   TYPE       V1   V2   V3   V4  V5

 267    06    INTERNATIONAL PAPER CO  LA          VI-84-607    840208        840508        NON-MUNI   502  609  610
 268    06    GONZALES, TOWN OF       LA0038717   VI-84-035    840222               4952  MUNI       500  350  503

------------------------------------------ ACTION=AO   YRMO=8402   REGION=06   STATE=OK ------------------------------------------

 OBS  REGION  NAME                              PERMIT      DOCKET       DATE   RDATE  CDATE   SIC   TYPE  V1   V2   V3   V4  V5

 269    06    HARTSHORNE, TOWN OF               OK0022861   VI-84-083    840217        840417  4952  MUNI  614
 270    06    TULSA, CITY OF (NORTHSIDE)        OK0026221   VI-84-011    840217                4952  MUNI  500  609  610
 271    06    ELK CITY, CITY OF                 OK0020486   VI-84-007    840206        840306  4952  MUNI  503  601
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---------------------------------------------- ACTION=AO   YRMO=8402   REGION=06   STATE=TX ----------------------------------------------

ORS  REGION  NAME                              PERMIT     DOCKET       DATE    RDATE  CDATE   SIC   TYPE       V1   V2   V3   V4   V5

272    06    USAF-KELLEY AFB-SAN ANTONIO       TX0000671  VI-84-030    840206         840306  3471  FEDERAL    500  532  503
273    06    LONGVIEW, CITY OF (MAIN)          TX0022217  VI-84-013    840221         840415  4952  MUNI       604
274    06    LUFKIN, CITY OF                   TX0024309  VI-84-036    840229                 4952  MUNI       503
275    06    LUFKIN, CITY OF                   TX0024309  VI-84-037    840209         840415  4952  MUNI       500  503
276    06    PARIS, CITY OF                    TX0027910  VI-84-308    840217         840701  4952  MUNI       500  504  600  601
277    06    PASADENA, CITY OF (VINCE BAYOU    TX0047902  VI-84-033    840207         840407  4952  MUNI       500  504  503  350  610
278    06    FT BEND COUNTY MUD NO. 13         TX0058118  VI-84-016    840217                 4953  NON-MUNI   604  610
279    06    WHITNEY, CITY OF                  TX0070556  VI-84-010    840217                 4952  MUNI       501  612  503  330  610
280    06    GRACE,WR & CO-DEER PARK           TX0008567  VI-84-1002   840221                 2899  NON-MUNI   500  521

---------------------------------------------- ACTION=AO   YRMO=8402   REGION=07   STATE=MO ----------------------------------------------

     ORS  REGION          NAME                     PERMIT       DOCKET     DATE    RDATE  CDATE  SIC   TYPE       V1   V2  V3  V4  V5

     281   07    MID-AMERICA DAIRYMEN CABOOL   MO0002828   84-W-002   840229                2023  NON-MUNI   614
     282   07    FARMINGTON CITY OF  STP       MO0040312   84-W-006   840229                4952  MUNI       614

---------------------------------------------- ACTION=AO   YRMO=8402   REGION=07   STATE=NE ----------------------------------------------

  ORS     REGION       NAME         PERMIT        DOCKET       DATE       RDATE     CDATE      SIC       TYPE     V1       V2      V3      V4      V5

  283       07       WAYNE STP    NE0033111     84-W-003     840229                            4952      MUNI     614

---------------------------------------------- ACTION=AO   YRMO=8402   REGION=08   STATE=UT ----------------------------------------------

ORS     REGION        NAME           PERMIT .     DOCKET      DATE      RDATE      CDATE      SIC      TYPE     V1      V2       V3      V4      V5

284       08       OREM CITY CORP    UT0020915    84-02       840216                          4952     MUNI     500      609

---------------------------------------------- ACTION=AO   YRMO=8402   REGION=09   STATE=CA ----------------------------------------------

    ORS  REGION               NAME                    PERMIT      DOCKET      DATE    RDATE  CDATE   SIC   TYPE  V1   V2   V3   V4  V5

    285   09    L.A. CNTY SAN. DIST.JOINT WPCP   CA0053813   IX FY-84-2  840214         840701  4952  MUNI  552  602  604

---------------------------------------------- ACTION=AO   YRMO=8403   REGION=01   STATE=MA ----------------------------------------------

ORS   REGION             NAME                   PERMIT      DOCKET    DATE     RDATE    CDATE     SIC      TYPE       V1     V2     V3    V4    V5

286     01     NEW ENG POWER-BRAYTON PT      MA0003654    84-15     840301            841001     4911    NON-MUNI    500    610

---------------------------------------------- ACTION=AO   YRMO=8403   REGION=02   STATE=NY ----------------------------------------------

    ORS  REGION                  NAME                   PERMIT      DOCKET    DATE    RDATE  CDATE   SIC   TYPE  V1   V2   V3  V4  V5

    287   02    HERKIMER (V) WATER POLLUTION C  NY0020885   II-84-04  840301         840501  4952  MUNI  500  600



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------------------------------------------ ACTION=AO   YRMO=8403   REGION=04   STATE=KY ------------------------------------------

   OBS  REGION       NAME          PERMIT         DOCKET        DATE   RDATE  CDATE  SIC    TYPE   V1    V2    V3    V4   V5

   288    04     HARDINBURG STP  KY0027481   84-A04(b-WP)   840305                4952   MUNI   500   530   600

------------------------------------------ ACTION=AO   YRMO=8403   REGION=05   STATE=IL ------------------------------------------

  OBS  REGION  NAME                               PERMIT      DOCKET           DATE    RDATE  CDATE   SIC   TYPE  V1   V2   V3  V4  V5

  289    05    DANVILLE SAN. DIS.                 IL0020788   V-W-84-AO-40     840301         840518  4952  MUNI  604  610
  290    05    KANKAKEE SWG TRMT PLT              IL0021768   V-W-84-AO-43     840301         840518  4952  MUNI  604  610
  291    05    ST. CHARLES                        IL0022705   V-W-84-AO-34     840301         840518  4952  MUNI  604  610
  292    05    WEST CHICAGO STP                   IL0023469   V-W-84-AO-36     840301         840518  4952  MUNI  604  610
  293    05    ITASCA STP                         IL0026280   V-W-84-AO-42     840301         840518  4952  MUNI  604  610
  294    05    BELVIDERE STP                      IL0027685   V-W-84-AO-39     840301         840518  4952  MUNI  604  610
  295    05    BLOOMINGTON-NORMAL S.D.            IL0027731   V-W-84-AO-38     840301         840518  4952  MUNI  604  610
  296    05    DOWNERS GROVE SAN DIST             IL0028380   V-W-84-AO-41     840301         840518  4952  MUNI  604  610
  297    05    LA SALLE MUNICIPAL SEWAGE TRMT     IL0029874   V-W-84-AO-44     840301         840518  4952  MUNI  604  610
  298    05    MARION SWG. TRMT. PLT.             IL0029688   V-W-84-AO-45     840301         840518  4952  MUNI  604  610
  299    05    MARION SOUTHEAST TRICKLING PLT     IL0029734   V-W-84-AO-29     840301         840518  4952  MUNI  604  610
  300    05    QUINCY WWTP                        IL0030503   V-W-84-AO-32     840301         840518  4952  MUNI  604  610
  301    05    PERU STP                           IL0030848   V-W-84-AO-31     840301         840518  4952  MUNI  604  610
  302    05    ROCHELLE STP                       IL0030741   V-W-84-AO-33     840301         840518  4952  MUNI  604  610
  303    05    SPRING VALLEY-CITY OF              IL0031216   V-W-84-AO-35     840301         840518  4952  MUNI  604  610
  304    05    WHEATON SANT DIST TRMT PLT         IL0031739   V-W-84-AO-37     840301         840518  4952  MUNI  604  610
  305    05    OLNEY STP                          IL0048755   V-W-84-AO-30     840301         840518  4952  MUNI  604  610

------------------------------------------ ACTION=AO   YRMO=8403   REGION=05   STATE=IN ------------------------------------------

 OBS  REGION          NAME                 PERMIT        DOCKET        DATE   RDATE  CDATE    SIC    TYPE   V1    V2    V3    V4   V5

 306    05     LINTON MUNICIPAL STP   IN0020575   V-W-84-AO-46   840305         840705   4952   MUNI   500   503   610

------------------------------------------ ACTION=AO   YRMO=8403   REGION=05   STATE=OH ------------------------------------------

 . OBS  REGION               NAME                   PERMIT       DOCKET        DATE   RDATE  CDATE   SIC   TYPE  V1   V2   V3    V4  V5

   307    05    LAKE COUNTY-MADISON SWG TRMT P  OH0036790  V-W-84-AO-47  840305        840701  4952  MUNI  500  605  610

------------------------------------------ ACTION=AO   YRMO=8403   REGION=06   STATE=AR ------------------------------------------

    OBS  REGION                NAME                  PERMIT      DOCKET     DATE   RDATE  CDATE  SIC     TYPE      V1   V2  V3  V4  V5

    308    06    TOSCO CORPORATION REFINERY - E  AR0000647  VI-84-044  840302                 2911  NON-MUNI  500

------------------------------------------ ACTION=AO   YRMO=8403   REGION=06   STATE=LA ------------------------------------------

   OBS   REGION           NAME              PERMIT    DOCKET       DATE    RDATE   CDATE    SIC     TYPE      V1    V2    V3   V4   V5

   309    06    PETRO PROCESSORS, INC.    LA     VI-84-088   840305          840601          NON-MUNI   552   502
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                                        THE GREAT SYSTEM                         8:59 SATURDAY, MARCH 24, 1984

                              ALL AOS          FOR FY84 BY MONTH

-------------------------------------------- ACTION=AO   YRMO=8403   REGION=06   STATE=TX ------------------------------------------

    OBS  REGION  NAME                              PERMIT     DOCKET      DATE    RDATE  CDATE    SIC   TYPE  V1   V2   V3   V4  V5

    510    06    W MEMORIAL MUD                    TX0021518  VI-84-039   840305                  4952  MUNI  500  350  501
    511    06    HARLINGEN, CITY OF (STP #0001)    TX0047937  VI-83-914   840311                  4952  MUNI  404
    512    06    CORSICANA, CITY OF (STP #0002)    TX0046731  VI-84-918   840309         840430   4952  MUNI  404

                                                                      8402
-------------------------------------------- ACTION=AO   YRMO=8403   REGION=02   STATE=NY ------------------------------------------

    OBS  REGION              NAME                  PERMIT     DOCKET      DATE    RDATE  CDATE  SIC     TYPE      V1   V2   V3   V4  V5

    513    02    LONG ISLAND DUCK FARMERS COOP     NY0004804  II-84-05    840209                2011  NON-MUNI  501  500  600
                                                                          840229
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Mr. **Molinari**. The question I would like to leave with you is this.

With a delegation of authority to certain States, you now have, in effect, another level of government overseeing compliance, and yet EPA remains in the picture. They are monitoring the States' actions.

I would assume that between the actions of the State and EPA, there is greater enforcement, because you now have two governmental units coming down on that person who has been in noncompliance.

But does it work out that way? We heard from GAO—and I'm sure you know that it really doesn't; that there is no difference whether EPA is the one issuing the permits or whether it is the States under their delegated authority in terms of those who are in compliance or not.

Is that accurate?

Mr. **Ravan**. I don't disagree with the GAO report, Mr. Molinari, in concept, in philosophy, or in fact. The upside of the delegation of authority is that resources on either side of the fence, either the Federal or the State side, can be redirected after delegation. We could go chase other rabbits, or they could take over where we have been working.

The downside of that situation is that there is a political boundary, or a sense of pride, or a States' rights philosophical bent, or in some cases, just a weak program on one side or the other. Therefore, you don't necessarily get a total additive result; 2 plus 2, in this case, does not necessarily equal 4. It might very well equal 2 because, under the philosophy of the law and what we have done to get the program into the State's hands, the State feels, that it is now adequate to do the job, and that it is the opportunity to do it, and that is the law behind it. And in dealing with their permitees, the State can say to the permittee: "Look, if you would like us to turn this case over to the Federal side, we can and will."

So there is some incentive. But I am not in disagreement with you.

Mr. **Molinari**. Why is it the States have responded so quickly, wanting to take over the issuance of permits?

Mr. **Ravan**. Well, Mr. Molinari, my experience tells me that I could not characterize the States as being that quick. In fact, it has taken some certain incentives, some working with the States, some bringing their programs up to an adequate level of resources, and some infusion of section 106 money under the act that you are familiar with.

There are some 35 States and 1 territory that now have approved NPDES programs. That would leave 17 States, and it's 1984, and the act was passed in 1972. Those that did have the incentive, in answer to your question, I think it's a question of their wanting to conduct their own business inside their own borders.

Mr. **Molinari**. Is it because it took longer or too long, in accordance with the States' view, to issue the permits, and they wanted to speed up the process? Is that part of the reasoning here?

Mr. **Ravan**. No, sir. I would be happy to provide you with the basis of my experience and knowledge to date and my involvement both from the private side as well as the public side in these programs.

There are some incentives for the States to take the program. One would be, as you mention, that they believe that with their resources, they could get the permits out faster.

Second, some of the Federal requirements, like the involvement of the environmental impact statement process, might be curtailed or, in fact, not required if they administered to the permit program themselves inside the States.

And last, I would again return to the point that the States simply like to conduct their business. The passage of the Clean Water Act—and the fairly burdensome requirements that were placed upon the dischargers by the act—was revolutionary. This so-called intrusion or Federal involvement with something so close as the local dischargers in my hometown—was a big change, and the States wanted, and I think correctly so, to bring that within their own purview as soon as they could.

Mr. WISE. May I interrupt for a moment?

Mr. MOLINARI. Yes. In fact, I have other questions, but I will defer my questioning.

Mr. LEVITAS. The Chair will recognize the gentleman.

Mr. WISE. I just have a couple of questions.

First of all, I want to thank Mr. Ravan for meeting with me concerning some problems we have had in our district. He has been very candid, but I think we are coming up against an institutional frustration here, and Chairman Howard alluded to that.

The problem is, Mr. Ravan, today your representatives are in my district, telling our people that there is nothing EPA can do for either Elk-Pinch or Malden Public Service Districts which will further the congressional mandate of clean water and streams.

Now everyone agrees that these two districts are in difficulty because of errors made all along the way by the EPA, the engineers or whoever. Yet who gets stuck with the clean-up bill? You have one district 90 percent completed, and construction has stopped. The EPA has put $12 million into that. You have another that is a $16 or $17 million investment that is in technical default of its bonds. They are not meeting the NPDES permits. They are not meeting the congressional mandate. They don't meet the congressional goals.

We have spent these Federal taxpayer dollars, and yet what have we accomplished? That is my frustration, not only with EPA, but with others. And my question becomes, I understand where you say that EPA can't do anything to, quote, "bail out" these two districts, because it's not in the regs. I understand that, but I also understand the congressional mandate, and it seems to me that when you are talking about the difference between—I also understand you will force the people in those two districts to do something about the clean water and streams. So we have this problem. You will hold a gun to their heads saying, "You've got to do something on the one hand, because that's a congressional mandate, but on the other hand we won't help you solve the problem you're in."

My frustration particularly is that by not finding a way to assist—and I have to believe that in past times, the EPA has found ways to assist other districts—in not finding a way to assist, you have made it impossible for us to fulfill the congressional mandate or improve that situation.

So I am expressing to you my frustration and, of course, my hope that EPA will continue working in this area. You did indicate a willingness to strongly consider legal and technical assistance for those two districts.

But could you just address that for a moment, that problem that does exist between the mandate and the dollars available to fulfill that mandate? And once EPA does get into the game and you make the point that, "Well, you can do this a lot of different ways. It's not mandated. You take a qrant from the Federal Government"—once EPA gets into the game and has established errors along the way, why should the people in Elk-Pinch and Malden pay for those mistakes by a doubled rate structure?

Mr. RAVAN. Mr. Wise, these two cases—and I know how painful it must be to you that both of them somehow are in your particular district——

Mr. WISE. I do feel twice blessed. [Laughter.]

Mr. RAVAN. I was trying to discuss some of this dilemma with Mr. Howard, because he was looking at the gross picture nationwide. And here we have two very painful examples of what we were trying to discuss.

On one side of the law, you are absolutely correct. Those two districts were entitled to 75 percent Federal participation with eligible costs under the rules and regulations of the construction grant program at the time of the grantsmaking. And that occurred, as you correctly pointed out.

On the other hand, there is the clear provision of the law that, yes, you must be clean. You must now be especially clean in meeting the requirements of the permit in that you did receive Federal funding for the projects in question.

I honestly can't give you a thorough analysis. I have begun to look into both situations. In the two cases at hand, the first is Malden, where there seems to be an overabundance of technology at the plantsite, making it difficult, if not impossible, to operate the plant. In the second case, Elkins, the question is whether or not the basic financial planning that went into the project was, one, adequate, or two, honest. And we will do just exactly as I promised to do for you, and I want to do that. I will offer all of the technical and legal assistance that I can, and I will pay for every eligible item at the 75-percent level that we possibly can on both of those projects.

I honestly can't promise you that that will resolve the two conflicts, and I don't know what the answer is to the second requirement that I am equally responsible for that says, yes, I must now enforce the requirements of the act.

Mr. WISE. And I know I am a newcomer with this committee, and I know you have dealt with it much before, Mr. Chairman, but in those two instances, we spent millions of Federal dollars. The projects aren't working. The goals are not being met.

Have we just thrown it away? I hope not.

Mr. RAVAN. I hope not, too, sir. I really do.

Mr. WISE. I do want to say, I really appreciate your candor and assistance, and I am hopeful we can continue working on this.

Mr. **Levitas**. Will the gentleman yield?

Mr. **Wise**. Yes.

Mr. **Levitas**. I would just like to pursue that, because I have discussed at some length with Mr. Wise the problems he has outlined. And in a general way, without—I won't hold you to this, but what do you think can be done to specifically deal with problems of this sort?

Mr. **Ravan**. Let's take Malden first, Mr. Chairman. In my opinion as one who has worked in the field for some time, I think we will probably need to take a hard look at two possible solutions.

The first deals with the technology itself. There was installed a UNOX, a pure oxygen system. I doubt the necessity for the installation of that particular technology, and that might be removed and go to a somewhat more conventional effort at that plant site.

The second thing that might occur is that some of the loading on the plant could be transferred by a major interceptor from that particular project to another service area, perhaps even Charleston.

In the second case, Elk-Pinch, I'm on a bit more shakey ground as to the resolution of the problem. The problem seems to be in the financial area, and it does seem to be that the financial planners in that particular case relied upon information and evidence that the project would be economically feasible. Today it does not look as if that is the case. In fact, the revenues were either overstated, or the demands upon the project for payment of the bonding scheme used in this particular instance were understated. And now there is a $1.3 million override or shortage, causing the cancellation of the project today.

I am not sure but what there might be some liabilities beyond the Federal Government in that case, and I would hesitate to attempt to testify on that.

Mr. **Levitas**. I think if the gentleman will yield further, that it is important for Mr. Wise and his constituents and the subcommittee to get some general idea of the types of things that might be looked at, at least as possibilities. Otherwise, there tends to be a sense of hopelessness and frustration, and therefore it was for that reason I wanted you to have an opportunity to express yourself.

Thank you, Mr. Wise.

Mr. **Wise**. Thank you, Mr. Chairman. I greatly appreciate your help in this area. Thank you very much.

Mr. **Ravan**. Mr. Chairman, could I return for a moment to Mr. Molinari?

Mr. **Levitas**. Sure.

Mr. **Ravan**. I asked my staff to obtain this for me, the information on section 301(h) waivers: 207 applications have been received to date; we have issued tentative decisions on 76, of which 24 were approved and 52 were denied.

You should understand, of course, between that preliminary decision and the final decision, there is a certain amount of negotiation, maybe even a court suit. Therefore final decisions were 22 applications issued not 19 that I gave you. Of those 22 final decisions out of 207, 5 were approved and 17 were denied.

Mr. **Molinari**. Fine. If I may?

Mr. **Levitas**. [Nodding affirmatively.]

Mr. Molinari. I just want to continue, if I may, before we break. I have a chart here that staff brought to my attention which is titled "Water Enforcement Action Report" for the first quarter of fiscal year 1984. It is broken down by region as to the total number of actions.

What strikes me in looking at that chart is the marked difference in the number of administrative orders, or total actions as they call it, from region to region. For example, in region III, which has the highest, it lists 129 actions commencing in that quarterly period, whereas region VII has zero; region X had zero; region IX has one. Region VIII has six. Region II has 13.

Now I suspect that part of the answer for the differential is that some of these regions have delegated more authority to the States in that region. But I am compelled to ask, why is there such a difference in the number of actions commenced by the various regions?

Mr. Ravan. Mr. Molinari, let me offer what I know to be the situation. Looking at region III, which is, as you know, headquartered in Philadelphia, and going out laterally in the column, the numbers in the area of spill referrals and SPCC seem somewhat skewed violations with the rest of the data. This means that someone let their gasoline, oil or other hazardous products go beyond the spill prevention plan or that area designated for them.

What that says to me is that in region III, No. 1 you have more of those types of opportunities, and second, you probably have a pretty aggressive team in that region looking after those kinds of facilities. However, when you come back to municipal majors, the first part of the lateral entry, you see, that the region is also fairly aggressive on its major municipals, and that would be characteristic again of the region. That is that region III has a lot of major municipal discharges. IV is consistent. VI is consistent.

That would say to me that, in those three regions—III, IV, and VI—fairly aggressive action is now taking place with regard to municipalities, not so much in the other categories. That is about as much intelligence as I could provide you.

Mr. Molinari. Isn't the converse true in the others that you have not mentioned? They might—and I stress the word "might"—be guilty of a lack of aggressive enforcement, and that results in the small numbers we see on the chart?

Mr. Ravan. Yes, sir, it might. It might also mean other characteristics of the region's particular program. This is one quarter, a 3-months' worth of data here. You might see that. The regional administrator, for instance, who must sign off on all of these actions, would realize that his performance in the first quarter was not that good, and he might inspire his troops to greater action in order to catch up in the other three quarters.

It might also mean that one particular region is well ahead of the game and doesn't have to be quite so aggressive.

It would be hard for me to characterize the qualities of the region, just looking at this data.

Mr. Molinari. Yes. But we do know that the Administrator has sent out a warning, "Get your act together or else."

Mr. Ravan. Yes, sir.

Mr. **Molinari**. I don't know what he based that on. Did he base it on statistics such as these?

Mr. **Ravan**. Yes, he did.

Mr. **Molinari**. He did? Is there any documentation that you could provide the subcommittee with to show the strengths and weaknesses of the regions which necessitated him making that statement?

Mr. **Ravan**. Yes, sir. I think I could provide you with data, such as the number of personnel, the character of the region, and who has how many of which category. I could provide you with historical perspective: how many of these cases actually got to the judge and how many didn't, which would tend to indicate the cooperativeness of all elements of that decisionmaking process up to and including Department of Justice personnel.

I am not certain I could provide you with absolute data that would tell you in every instance why it is different. I don't think there could be any doubt in anybody's mind at this point in time about what they are supposed to do. I can tell you that we have a specific number of commitments from each of these regions as to their goal this year, and I can also emphasize that if they don't make these goals, they are in deep trouble.

Mr. **Molinari**. Can you provide us with a copy of those goals? They would be very interesting.

Mr. **Ravan**. Yes.

Mr. **Levitas**. Without objection, we will receive those for the record and make them a part of the record.

[Information received from Mr. Ravan follows:]

OFFICE OF WATER
REPORT TO THE AGENCY
ON
COMPLIANCE STATUS
FY 1983 END-OF-YEAR

The number of permittees has been revised to reflect the latest information from the States on the permittee.
***This data was phoned in by Region. We have not received the actual QNCRs, therefore, we are unable to verify the data.

W/H-28
W/H-29

COMPLIANCE RATES FOR ALL MAJOR MUNICIPALS ON FINAL EFFLUENT LIMITS

(including P.L. 92-500 Municipals)

Regions	No. of Permittees **	Start-of-Year Rate (3rd Q 82 data)	End-of-Year Target (3rd Q 83 proj)	Revised End-of-Year Target*	4th Qtr. Actual* (3rd Q 83 data) SNC	ADJ
I	291	87%	NO TARGETS	NO TARGETS	86%	85%
II	365	58%			88%	84%
III ***	197	67%			86%	86%
IV	358	88%			92%	92%
V	395	90%			94%	90%
VI	238	64%			82%	76%
VII	155	85%			84%	79%
VIII	149	74%			86%	86%
IX	141	77%			91%	88%
X	83	83%			88%	83%
National	2372	78%			88%	82%

*Based on the definition for "significant noncompliance."

been revised to reflect the latest information from the States on the permittees.

***This data was phoned in by Region. We have not received the actual QNCRs, therefore, we are unable to verify the data.

W/H-28
W/H-29

COMPLIANCE RATES FOR MAJOR P.L. 92-500 MUNICIPALS ON FINAL EFFLUENT LIMITS

Regions	No. of Permittees **	Start-of-Year Rate (3rd Q 82 data)	End-of-Year Target (3rd Q 83 proj)	Revised End-of-Year Target*	4th Qtr. Actual* (3rd Q 83 data)	
					SNC	ADJ
I	91	81%	85%	89%	88%	87%
II	71	75%	76%	80%	75%	71%
III ***	81	80%	84%	84%	89%	89%
IV	133	90%	85^+%	85^+%	94%	94%
V	158	90%	85%	91%	92%	88%
VI	55	69%	75%	80%	80%	74%
VII	94	90%	85^+%	85^+%	91%	87%
VIII	47	89%	92%	91%	94%	94%
IX	49	93%	86%	90%	92%	89%
X	47	92%	90%	94%	85%	82%
National	826	87%	85^+%	90%	89%	86%

* Based on the definition for "significant noncompliance."

revised to reflect the latest information from the States on the permittees.

***This data was phoned in by Region. We have not received the actual QNCRs, therefore, we are unable to verify the data.

W/H-34
W/H-35

COMPLIANCE RATES FOR MAJOR NON-MUNICIPALS ON FINAL EFFLUENT LIMITS
(excluding Federal Facilities)

Regions	No. of Permittees **	Start-of-Year Rate (3rd Q 82 data)	End-of-Year Target (3rd Q 83 proj)	Revised End-of-Year Target*	4th Qtr. Actual* (3rd Q 83 data) SNC	ADJ
I	257	85%	80%	91%	92%	90%
II	406	75%	83%	88%	63%	80%
III ***	418	83%	88%	88%	88%	88%
IV	793	92%	92%	92%	92%	92%
V	744	83%	87%	93%	94%	87%
VI	440	78%	82%	87%	93%	87%
VII	102	80%	84%	89%	86%	81%
VIII	144	94%	93%	96%	92%	92%
IX	88	95%	93%	97%	94%	91%
X	134	97%	98%	98%	90%	[illegible]
National	3526	84%	89%	94%	91%	85%

* Based on the definition of "significant noncompliance."

STATE ADMINISTRATIVE ENFORCEMENT ACTIVITIES
(Cumulative Numbers)

Region	* State Compliance Inspections		
	Major Munic.	Minor Munic.	Major Non-Munic.
I	747	104	150
II	125	1	118
III	413	197	211
IV	309	285	470
V	210	104	169
VI	244	134	520
VII	51	39	22
VIII	122	184	42
IX	118	52	83
X	71	39	73
National	2,410	1,139	1,858

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*These are preliminary numbers. The Regions are not required to pull end of year numbers until November 15th. The final numbers will be reported next reporting period.

OFFICE OF WATER - WORKYEAR ALLOCATION - 3/1/84

1984	TOTAL	I	II	III	IV	V	VI	VII	VIII	IX	X
Water Quality Mgmt.	65.3	5.4	5.7	5.2	8.3	8.9	6.7	8.7	5.4	5.4	5.6
Great Lakes	15					15					
Chesapeake Bay	5			5							
Oceans	18.9	1.4	10.9	1.3	1.3	0	1.4	0	0	1.3	1.3
Water Quality Stds.	55.2	3.9	3.5	5.9	9	9	8.9	3.4	4.6	3.9	3.1
Monitoring	149.3	12.5	16.1	15.9	20.2	20.2	15	13.7	12.9	11	11.8
Municipal Waste Treatment	441.8	36.8	42.5	59.4	57.5	90.2	45.9	23.5	23.7	38.8	23.5
Operations and Maintenance	30	2.6	2.4	2.6	4.3	7.3	2.9	2.1	1.8	2.2	1.8
Water Quality Enforcement	325.7	27.8	34	41.3	56.4	41.9	48.1	16.7	20.2	16.9	22.4
Permits	254	33.2	31.6	17.5	30.2	19.4	47.3	10.5	13.9	23.1	27.3
Water Quality Subtotal	1360.2	123.6	146.7	154.1	187.2	211.9	176.2	78.6	82.5	102.6	96.8
Public Water System Supervision Prog.	132.4	9.5	7.9	25.7	11.5	17.1	9.2	7.9	15.7	12.5	15.4
Underground Injection Control Prog.	120.8	6	12.5	13.2	17.7	18.8	16.6	7.8	12.4	9.2	6.6
Drinking Water Enforcement	23.5	0	2.5	4.2	3.1	5.2	2.5	.6	2.8	1.1	1.5
Drinking Water Subtotal	276.7	15.5	22.9	43.1	32.3	41.1	28.3	16.3	30.9	22.8	23.5
TOTAL	1636.9	139.1	169.6	197.2	219.5	253	204.5	94.9	113.4	125.4	120.3

OFFICE OF WATER
REPORT TO THE AGENCY
ON
COMPLIANCE STATUS
FIRST QUARTER OF FY 1984

NOTE: The handwritten corrections represent modifications provided by the Regions, which will be reflected in the Second Quarter Report. This is the first quarter that the Regions have reported on these specific measures, and there will be a continuing refinement of the baseline data.

COMPLIANCE STATUS
ANNUAL COMMITMENTS

(% SNC with FEL)
June 30, 1984

REGION	MAJOR NON-MUNICIPAL	MAJOR MUNICIPAL	MAJOR P.L. 92-500	MINOR P.L. 92-500
REGION I				
EPA	8	8	12	15
NPDES States	3	4	4	15
REGION II				
EPA	19	82	0	0
NPDES States	10	19	17	28
REGION III				
EPA	0	0	0	0
NPDES States	11	16	12	30
REGION IV				
EPA	6	10	6	9
NPDES States	8	13	6	9
REGION V				
EPA	-	-	-	-
NPDES States	5	6	7	7
REGION VI				
EPA	7	19	25	20
NPDES States	-	-	-	-
REGION VII				
EPA	-	-	-	-
NPDES States	10	10	10	10
REGION VIII				
EPA	12	8	15	0
NPDES States	5	14	15	0
REGION IX				
EPA	10	22	12	35
NPDES	4	12	18	18
REGION X				
EPA	5	8	9	10
NPDES	9	8	9	9
NATIONAL				
EPA				
NPDES States				
TOTAL				

COMPLIANCE INFORMATION
P.L. 92-500 MAJOR MUNICIPALS

REGION	Total # Major 92-500 Municipal Permits	# Major 92-500 Permittees on FEL /	# Permittees in SNC with FEL	(# Needing Construction to Meet FEL)	= % Permittees in SNC with FEL
REGION I					
EPA	**	74 /	10	(**)	= 14
NPDES States		23 /	2	( )	= 9
REGION II					
EPA		2 /	0	( )	= 0
NPDES States		72 /	19	( )	= 26
REGION III					
EPA		1 /	1	( )	= 100
NPDES States		117 /	24	( )	= 21
REGION IV					
EPA		21 /	5	( )	= 24
NPDES States		130 /	10	( )	= 8
REGION V					
EPA		/		( )	=
NPDES States		164 /	14	( )	= 9
REGION VI					
EPA		/		( )	=
NPDES States		/		( )	=
REGION VII					
EPA		/		( )	=
NPDES States		94 /	10	( )	= 11
REGION VIII					
EPA		13 /	2	( )	= 15
NPDES States		43 /	4	( )	= 9
REGION IX					
EPA		11 ~~5~~ /	9 ~~4~~	( )	= 44
NPDES States		51 ~~50~~ /	~~1~~ 2	( )	= 2
REGION X					
EPA		18 /	1	( )	= 6
NPDES States		23 /	0	( )	= 0
NATIONAL *					
EPA		138 /	23	( )	17
NPDES States		716 /	84	( )	= 12
TOTAL		854 /	107	( )	= 13

** Data will be provided next quarter.

COMPLIANCE INFORMATION
P.L. 92-500 MINOR MUNICIPALS

REGION	Total # Minor 92-500 Municipal Permits	# Minor 92-500 Permittees on FEL /	# Permittees in SNC with FEL	(# Needing Construction to Meet FEL)	= % Permittees in SNC with FEL
REGION I	**			**	
EPA		25 /	5	( )	= 20
NPDES States		28 /	5	( )	= 18
REGION II					
EPA		1 /	0	( )	= 0
NPDES States		18 /	not yet(available)		=
REGION III					
EPA		0 /		( )	=
NPDES States		120 /	39	( )	= 33
REGION IV					
EPA		2 /	0	( )	= 0
NPDES States		112 /	9	( )	= 8
REGION V					
EPA		/		( )	=
NPDES States		245 /	15	( )	= 6
REGION VI					
EPA		/		( )	=
NPDES States		/		( )	=
REGION VII					
EPA		/		( )	=
NPDES States		470 /		( )	=
		Did not report on minors.			
REGION VIII					
EPA		/		( )	=
NPDES States		/		( )	=
REGION IX					
EPA		14 /	0*	( )	= 0*
NPDES States		36 /	4	( )	= 11
REGION X					
EPA		12 /	1	( )	= 8
NPDES States		115 /	5	( )	= 4
NATIONAL					
EPA		54 /	6	( )	11
NPDES States		1144 /	77	( )	= 7
TOTAL		1198 /	83	( )	= 7

* Does not include Arizona, will be included in next quarter's report.

** Data will be provided next quarter

W-7
W-8
W-15
W-16

REDUCING THE NUMBER OF NPDES FACILITIES IN SIGNIFICANT NONCOMPLIANCE

On the attached forms for major non-municipals (excluding federal facilities) and major municipals (including P.L. 92-500 municipals), please provide, by Region and nationally, for EPA and NPDES States:

- o The number of permittees in significant noncompliance with final effluent limits and the number in significant noncompliance with construction schedules and/or interim effluent limits at the start of FY 1984, based on 6/30/83 data, and quarterly targets for returning them to compliance or subjecting them to an enforcement action.*

- o First quarter actual numbers for those returned to compliance and those subjected to an enforcement action.

*Enforcement actions include any statutory remedy such as a Federal administrative order or State equivalent action, a Federal notice of violation (reported separately), a judicial referral, or a court-approved consent decree.

COMMENTS:

Region IV is meeting with their States this week and anticipate substantial changes in their baseline data, especially for municipal facilities data. Adjusted baseline and first quarter data will be submitted as soon as it becomes available.

COMPLIANCE STATUS
ALL MAJOR NON-MUNICIPALS
(Excluding Federal Facilities)

REGION	Total # Major Non-Municipal Permits	# Major Non-Munic. permittees on FEL /	# Permittees in SNC with FEL	(# Needing Construction to Meet FEL) =	% Permittees in SNC with FEL	# Major Non/Munic permittees on CS & IEL* /	# Permittees in SNC with CS =	% Permittees in SNC with CS	# Permittees in SNC with IEL =	% Permittees in SNC with IEL
REGION I EPA	176 ~~173~~	159	11	(3)	7	19 ~~14~~	0	0	4	21% ~~29~~
NPDES States	125	99	3	(0)	3	26	8	31	1	4
REGION II EPA	67	42	8	(0)	19	25	3	12	0	0
NPDES States	401	364	40	(6)	11	37	2	5	5	14
REGION III EPA	3	3	0	(0)	0	0				
NPDES States	407	361	58	(7)	16	46	3	7	2	4
REGION IV EPA	115	114	7	(1)	6	1	0	0	0	0
NPDES States	689	679	45	(2)	7	10	0	0	1	10
REGION V EPA				( )						
NPDES States	713	696	35 ~~30~~	(4)	4	17	0	0	2	12

* If a facility is in SNC with both its construction schedule and interim limits, it should be reported in noncompliance with its construction schedule.

COMPLIANCE STATUS
ALL MAJOR NON-MUNICIPALS
(Excluding Federal Facilities)

REGION	Total # Major Non-Municipal Permits	# Major Non-Munic. permittees on FEL /	# Permittees in SNC with FEL	(# Needing Construction to Meet FEL) =	% Permittees in SNC with FEL	# Major Non-Munic. Permittees on CS & IEL* /	# Permittees in SNC with CS =	% Permittees in SNC with CS	# Permittees in SNC with IEL =	% Permittees in SNC with IEL
REGION VI										
EPA				( )						
NPDES States				( )						
REGION VII										
EPA				( )						
NPDES States	112	107	12	(0)	11	5	0	0	0	0
REGION VIII										
EPA	21	15	3	(0)	20	6	1	17	0	0
NPDES States	103	95	4	(0)	4	8	0	0	1	13
REGION IX										
EPA	21	21	2	(0)	10	0				
NPDES States	~~102~~ 100	99	5	(1)	5	3	3	100	0	0
REGION X										
EPA	61	61	2	(2)	3	0				
NPDES States	75	75	5	(5)	7	0				
NATIONAL										
EPA	461**	415	33	(6)	8	46	4	9	4	9
NPDES States	2727	2575	202	(25)	8	152	16	11	12	8
TOTAL	3188	2990	235	(31)	8	198	20	10	16	8

* If a facility is in SNC with both its construction schedule and interim limits, it should be reported in noncompliance with its construction schedule.

** No Region VI data included in national totals.

COMPLIANCE STATUS
ALL MAJOR MUNICIPALS
(Including 92-500 Municipals)

REGION	Total # Major Municipal Permits	# Major Munic. Permittees on FEL /	# Permittees in SNC with FEL	(# Needing Construction to Meet FEL) =	% Permittees in SNC with FEL	# Major Munic. Permittees on CS & IEL* /	# Permittees in SNC with CS =	% Permittees in SNC with CS	# Permittees in SNC with IEL =	% Permittees in SNC with IEL
REGION I										
EPA	~~212~~ 229	148 /	14	(6) =	9	~~64~~ 81 /	0 =	0	21 =	~~33~~ 26
NPDES States	111	89 /	3	(0) =	3	22 /	0 =	0	~~4~~ 3 =	~~16~~ 14
REGION II										
EPA	31	22 /	22	(0) =	100	9 /	6 =	67	3 =	33
NPDES States	444	~~250~~ 281 /	82	(17) =	~~33~~ 29%	~~194~~ 163 /	31 =	~~16~~ 19	37 =	~~19~~ 23
REGION III										
EPA	1	1 /	1	(0) =	100	0 /	=		=	
NPDES States	364	216 /	44	(6) =	20	148 /	6 =	4	47 =	32
REGION IV										
EPA	128	63 /	10	(2) =	16	65 /	11 =	17	21 =	32
NPDES States	574	309 /	44	(2) =	14	265 /	12 =	5	30 =	11
REGION V										
EPA		/		( ) =		/	=		=	
NPDES States	642	394 /	32	(7) =	8	248 /	7 =	3	31 =	13

* If a facility is in SNC with both its construction schedule and interim limits, it should be reported in noncompliance with its construction schedule.

COMPLIANCE STATUS
ALL MAJOR MUNICIPALS
(Including 92-500 Municipals)

REGION	Total # Major Municipal Permits	# Major Munic. Permittees on FEL /	# Permittees in SNC with FEL	(# Needing Construction to Meet FEL) =	% Permittees in SNC with FEL	# Major Munic. Permittees on CS & IEL* /	# Permittees in SNC with CS =	% Permittees in SNC with CS	# Permittees in SNC with IEL =	% Permittees in SNC with IEL
REGION VI										
EPA NPDES		/		( ) =		/	=		=	
States		/		( ) =		/	=		=	
REGION VII										
EPA NPDES		/		( ) =		/	=		=	
States	214	142 /	16	(6) =	11	72 /	0 =	0	5 =	7
REGION VIII										
EPA NPDES	64	24 /	2	(0) =	8	40 /	16 =	40	1 =	3
States	128	93 /	14	(5) =	15	35 /	9 =	26	6 =	17
REGION IX										
EPA NPDES	19	~~15~~ 16 /	5	(1) =	33	4 /	1 =	25	0 =	0
States	148	103 /	15	(0) =	15	45 /	12 =	27	12 =	27
REGION X										
EPA NPDES	30	26 /	1	(4) =	4	4 /	1 =	25	0 =	0
States	69	62 /	1	(3) =	2	7 /	2 =	29	1 =	14
NATIONAL										
EPA NPDES	485 **	299 /	55	(13) =	18	186 /	35 =	19	46 =	25
States	2694	1658 /	251	(46) =	15	1036 /	79 =	8	173 =	17
TOTAL	3179	1957 /	306	(59) =	16	1222 /	114 =	9	219 =	18

* If a facility is in SNC with both its construction schedule and interim limits, it should be reported in noncompliance with its construction schedule.

** Region VI data not included in totals.

REDUCING THE NUMBER OF MAJOR NON-MUNICIPALS IN SIGNIFICANT NONCOMPLIANCE WITH FEL

(Excluding Federal Facilities)

REGION	# Permittees in SNC with FEL As of 6/30/83	1st Quarter			2nd Quarter			3rd Quarter			4th Quarter		
		Target (Compl. + Enf.)	Actual		Target (Compl. + Enf.)	Actual		Target (Compl. + Enf.)	Actual		Target (Compl. + Enf.)	Actual	
			Compl.	Enf.		Compl.	Enf.		Compl.	Enf.		Compl.	Enf.
REGION I													
EPA	16	4	12	0	8			12			16		
NPDES States	3	0	2	0 ( )	1		( )	2		( )	3		( )
REGION II													
EPA	10	3	3	0	3			7			10		
NPDES States	46	25	25	1 (0)	30		( )	37		( )	46		( )
REGION III													
EPA	0												
NPDES States	48	2	13	11 (1)	8		( )	28		( )	48		( )
REGION IV													
EPA	1	0	1	0	1			1			1		
NPDES States	54	14	21	6 (0)	26		( )	42		( )	54		( )
REGION V													
EPA													
NPDES States	41	10	16	7 (0)	20		( )	30		( )	41		( )
REGION VI													
EPA	27	7			14			21			27		
NPDES States				( )			( )			( )			( )

( ) Number of NOVs issued to NPDES States by EPA.

REDUCING THE NUMBER OF MAJOR NON-MUNICIPALS IN SIGNIFICANT NONCOMPLIANCE WITH FEL

(Excluding Federal Facilities)

REGION	# Permittees in SNC with FEL As of 6/30/83	1st Quarter			2nd Quarter			3rd Quarter			4th Quarter		
		Target (Compl. + Enf.)	Actual		Target (Compl. + Enf.)	Actual		Target (Compl. + Enf.)	Actual		Target (Compl. + Enf.)	Actual	
			Compl.	Enf.		Compl.	Enf.		Compl.	Enf.		Compl.	Enf.
REGION VII													
EPA													
NPDES States	6	1	4	0 ( )	3		( )	4		( )	6		( )
REGION VIII													
EPA	2	0	1	0	0			1			2		
NPDES States	6	1	2	0 ( )	3		( )	5		( )	6		( )
REGION IX													
EPA	2	0	0	0	0			2			2		
NPDES States	6	2	1	2 (0)	2		( )	4		( )	6		( )
REGION X													
EPA	2	0	0	0	0			0			2		
NPDES States	7	2	0	3 ( )	2		( )	4		( )	7		( )
*NATIONAL		7	17	0									
EPA	60	14			26			44			60		
NPDES		57	84	30 1									
States	217	57		( )	95		( )	156		( )	217		( )
		64	101	30 1									
TOTAL	277	71		( )	121		( )	200		( )	277		( )

( ) Number of NOVs issued to NPDES States by EPA.
*Top lines do not include Region VI, which did not submit the 1st quarter report.

REDUCING THE NUMBER OF
MAJOR NON-MUNICIPALS IN SIGNIFICANT NONCOMPLIANCE WITH CS AND/OR IEL

(Excluding Federal Facilities)

REGION	# Permittees in SNC with CS/IEL As of 6/30/83	1st Quarter			2nd Quarter			3rd Quarter			4th Quarter		
		Target (Compl. + Enf.)	Actual		Target (Compl. + Enf.)	Actual		Target (Compl. + Enf.)	Actual		Target (Compl. + Enf.)	Actual	
			Compl.	Enf.		Compl.	Enf.		Compl.	Enf.		Compl.	Enf.
REGION I													
EPA	5	1	0	4	2			3			5		
NPDES States	5	1	1	( )	2		( )	3		( )	5		( )
REGION II													
EPA	4	1	1	0	1			2			4		
NPDES States	6	2	2	0 (0)	2		( )	5		( )	6		( )
REGION III													
EPA	0												
NPDES States	4	0	1	3 (0)	0		( )	1		( )	4		( )
REGION IV													
EPA	0												
NPDES States	1	1	0	1 (0)	1		( )	1		( )	1		( )
REGION V													
EPA													
NPDES States	1	0	0	0 ( )	1		( )	1		( )	1		( )
REGION VI													
EPA	7	1			3			5			7		
NPDES States				( )			( )			( )			( )

( ) Number of NOVs issued to NPDES States by EPA.

REDUCING THE NUMBER OF
MAJOR NON-MUNICIPALS IN SIGNIFICANT NONCOMPLIANCE WITH CS AND/OR IEL

(Excluding Federal Facilities)

REGION	# Permittees in SNC with CS/IEL As of 6/30/83	1st Quarter			2nd Quarter			3rd Quarter			4th Quarter		
		Target (Compl. + Enf.)	Actual		Target (Compl. + Enf.)	Actual		Target (Compl. + Enf.)	Actual		Target (Compl. + Enf.)	Actual	
			Compl.	Enf.		Compl.	Enf.		Compl.	Enf.		Compl.	Enf.
REGION VII													
EPA			0										
NPDES													
States	2	1	X	1 ( )	1		( )	1		( )	2		( )
EGION VIII													
EPA	1	0	0	x0	1			1			1		
NPDES													
States	1	0	1	0 (-)	0		( )	1		( )	1		( )
REGION IX													
EPA	0												
NPDES													
States	3	2	0	2 (0)	2		( )	2		( )	3		( )
REGION X													
EPA	0												
NPDES													
States	0			( )			( )			( )			( )
*NATIONAL		2	1	5									
EPA	17	3			7			11			17		
NPDES		7	6	7 0									
States	23	7		( )	9		( )	15		( )	23		( )
		9	7	12 0									
TOTAL	40	10		( )	16		( )	26		( )	40		( )

( ) Number of NOVs issued to NPDES States by EPA.

*Top lines do not include Region VI, which did not submit the 1st quarter report.

REDUCING THE NUMBER OF
MAJOR MUNICIPALS IN SIGNIFICANT NONCOMPLIANCE WITH FEL
(Including Major 92-500 Municipals)

REGION	# Permittees in SNC with FEL As of 6/30/83	1st Quarter			2nd Quarter			3rd Quarter			4th Quarter		
		Target (Compl. + Enf.)	Actual		Target (Compl. + Enf.)	Actual		Target (Compl. + Enf.)	Actual		Target (Compl. + Enf.)	Actual	
			Compl.	Enf.		Compl.	Enf.		Compl.	Enf.		Compl.	Enf.
REGION I													
EPA	17	4	10	0	9			13 ~~14~~			17		
NPDES States	4	0	3	0 ( )	1		( )	2		( )	4		( )
REGION II													
EPA	22	0	0	0	0			0			22		
NPDES States	59	15	14	5 (2)	21		( )	29		( )	59		( )
REGION III													
EPA	1	0	0	0	0			1			1		
NPDES States	34	3	8	10 (0)	8		( )	20		( )	34		( )
REGION IV													
EPA	9	0	1	1	2			4			9		
NPDES States	30	0		( )	10		( )	20		( )	30		( )
REGION V													
EPA													
NPDES States	25	6	8	6 (1)	12		( )	18		( )	25		( )
REGION VI													
EPA	42	10			20			30			42		
NPDES States				( )			( )			( )			( )

( ) Number of NOVs issued to NPDES States by EPA.

REDUCING THE NUMBER OF MAJOR MUNICIPALS IN SIGNIFICANT NONCOMPLIANCE WITH FEL

(Including Major 92-500 Municipals)

REGION	# Per-mittees in SNC with FEL As of 6/30/83	1st Quarter			2nd Quarter			3rd Quarter			4th Quarter		
		Target (Compl. + Enf.)	Actual		Target (Compl. + Enf.)	Actual		Target (Compl. + Enf.)	Actual		Target (Compl. + Enf.)	Actual	
			Compl.	Enf.		Compl.	Enf.		Compl.	Enf.		Compl.	Enf.
REGION VII													
EPA													
NPDES States	15	1	6	2 ( )	4		( )	8		( )	15		( )
REGION VIII													
EPA	2	2	2	0	2			2			2		
NPDES States	15	2	5	0 (0)	5		( )	9		( )	15		( )
REGION IX													
EPA	9	0	0	0	0			2			9		
NPDES States	14	3	1	4 (1)	6		( )	9		( )	14		( )
REGION X													
EPA	4	3	0	3	3			3			4		
NPDES States	5	1	2	0 ( )	1		( )	2		( )	5		( )
*NATIONAL		9	13	4									
EPA	106	19			36			56			106		
NPDES States	201	31 31	47	27 4 ( )	68		( )	117		( )	201		( )
TOTAL	307	40 50	60	31 4 ( )	104		( )	173		( )	307		( )

( ) Number of NOVs issued to NPDES States by EPA.

*Top lines do not include Region VI, which did not submit the 1st quarter report.

REDUCING THE NUMBER OF MAJOR MUNICIPALS IN SIGNIFICANT NONCOMPLIANCE WITH CS AND/OR IEL

(Including Major 92-500 Municipals)

REGION	# Per-mittees in SNC with CS/IEL As of 6/30/83	1st Quarter			2nd Quarter			3rd Quarter			4th Quarter		
		Target (Compl. + Enf.)	Actual		Target (Compl. + Enf.)	Actual		Target (Compl. + Enf.)	Actual		Target (Compl. + Enf.)	Actual	
			Compl.	Enf.		Compl.	Enf.		Compl.	Enf.		Compl.	Enf.
REGION I													
EPA	22	5	3	7	10			16			22		
NPDES States	5	1	3	( )	2		( )	3		( )	5		( )
REGION II													
EPA	9	0	0	0	0			0			9		
NPDES States	75	7	9	6 (3)	15		( )	29		( )	75		( )
REGION III													
EPA	0												
NPDES States	63	0	12	4 (0)	7		( )	30		( )	63		( )
REGION IV													
EPA	48	5	17	0	24			36			48		
NPDES States	6	0		( )	1		( )	4		( )	6		( )
REGION V													
EPA													
NPDES States	31	8	14	1 (0)	16		( )	24		( )	31		( )
REGION VI													
EPA	34	8			16			24			34		
NPDES States				( )			( )			( )			( )

( ) Number of NOVs issued to NPDES States by EPA.

FEDERAL FACILITIES

The Office of Federal Activities has been tasked by the Administrator to establish an inventory of all major federal facilities by the first quarter FY 84 and to monitor their compliance status through the Management Accountability System (see FY 84 MAS, page OFA-1). To facilitate this activity, please provide a list of all major federal facilities covered by Clean Water Act permitting requirements along with the definition and/or criteria for identifying "majors." OMSE will immediately send these submissions to OFA, for their review and comment. In future quarters, OMSE will collect the compliance data for the MAS reports and submit it to OFA for review and analysis.

Also, on the attached forms for major federal facilities, please provide, by Region and nationally, for EPA and NPDES States:

- The number of permittees in significant noncompliance with final effluent limits and the number in significant noncompliance with construction schedules and/or interim effluent limits at the start of FY 84, based on 6/30/83 data, and quarterly targets for addressing or returning them to compliance.*
- First quarter actual numbers for those returned to compliance and those addressed.

*Significant noncomplying federal facilities may be addressed in the following ways: a) returned to compliance, b) placed on an acceptable compliance schedule or compliance agreement, c) documented dispute forwarded to Headquarters for resolution, and d) Presidential exemption.

COMMENTS:

All Regions except Region IV have responded to the Bruce Barrett letter of December 7, 1983 which requested changes and additions to the major Federal facilities list. These changes are now being made in PCS, and Region IV has been contacted by the Division Director in reference to their delinquency. Attached you will find the current list of Federal facilities, the Barrett letter of December 7, 1983 which gives the definition of major municipal dischargers, and the permit classification criteria for determining major nonmunicipals.

Mr. **Molinari.** The one thing I would hope we don't see a repeat of, is a situation 2 years ago where there was a memorandum put out to the various regions, suggesting that they were not doing the job of enforcement that they were supposed to, and that the number of full-time employees—and they actually showed projections—would be reduced if the regions enforcement actions did not increase.

Do you remember that?

Mr. **Levitas.** [Nodding affirmatively.]

Mr. **Molinari.** I think Yamada was the author of that memorandum, according to Mr. Perry. I think the memorandum had his name on it, if I'm not mistaken.

My observation at the time was you are penalizing the people in the region because of inefficiency, ineptitude or whatever on the part of the employees. This rather remarkable document said: "Because you're not doing your job, we're going to cut back." Some of the figures were rather dramatic. In region II where I come from, they were to be decimated. There was no way they could continue the job.

I hope there's nothing like that on the planning boards today.

Mr. **Ravan.** No, sir. That's what I would describe as a double disincentive. [Laughter.]

That doesn't follow my logic either, Mr. Molinari. That's all I could say about that particular epistle.

Mr. **Molinari.** Fine. I think at this point I will yield back to the chairman. I know he has a number of further questions. I may have a couple more myself. I am very much impressed by your testimony and by your commitment, and I see a substantial improvement and a much better attitude, and it gives us a good deal of hope as to what will happen in the months ahead at EPA.

Mr. **Ravan.** Thank you, sir. I will try to keep those commitments, so that you don't have to change your attitude, especially toward me. [Laughter.]

Mr. **Levitas.** I have a couple of questions, Mr. Ravan.

Let me turn for a moment to the problem of enforcing or creating incentives for the local municipalities to perform appropriate operation and maintenance of the plants, once they become operational.

This most recent GAO report, our subcommittee report in 1981, the GAO report that preceded that, all have indicated that poor operation and maintenance contributed significantly to the failure of plants to meet their permits—untrained, unqualified personnel who didn't understand what they were doing.

As I said yesterday, it was like buying the Rolls Royce and then hiring the village idiot to be the chauffeur. And yet what happens historically is that when the new, modern, state-of-the-art plant is there and gets messed up by the improper O&M and the general way in which it is being run, somehow or another, either directly or indirectly, that municipality comes back and either openly or disguised, hidden in some new grant application, calls on the Federal Government to repair the plant they messed up.

Just so we're not talking about someplace far away, my recollection is, that is precisely what happened in a major plant in Atlanta, GA, several years ago, the Clayton plant.

Mr. **Ravan**. Yes, sir.

Mr. **Levitas**. There are regulations which give EPA the right to withhold funds from responsible grantees when they are violating regulations of permits and not living up to their obligations.

If this is a major problem—and I think it is, pretty clearly—what can you do as Administrator to see that these municipalities put their resources into the proper operation and maintenance, that they have training programs, that they are putting people in charge of these plants who know what they are doing? What can you do about that?

Mr. **Ravan**. Mr. Chairman, may I ask the indulgence of the committee to take a minute and share my opinion with you?

Some months ago, I was in Florida, and I made a speech similar to what you just said. I indicated what I thought was a fairly atrocious action on the part of some cities, especially those that are not well heeled financially, and that don't have good planners. I built my case and finally concluded that, in fact, you might in some cases find some municipal official's second cousin operating the plant, with or without preparation or the required certificates.

To make a long story short, I ended up apologizing publicly to the audience involved and to two Members of Congress because I would dare allude to such a condition.

I don't think that changes, Mr. Chairman, what you just said or what I said. It simply shows the difficulty of dealing with a very sensitive issue at the local level, where a mayor and city council and so forth are involved, and where their reputations—politically and otherwise—are at stake.

Having said all of that, I think there are three things I can do.

I think the Congress has already helped substantially by giving us the requirement that the cities and towns that receive grants certify to us that, 1 year after beginning operation at the plant, that the plant does perform, that the equipment does perform, and that the permit conditions are being met. That would require, obviously, fixes for all of the ills you just pointed out.

With regard to withholding money, however, once the plant has been properly constructed according to plans and specifications and has passed a financial audit, we are required to deliver the grant we have promised. And we do that. Therefore, there would be no opportunity to withhold a grant kind of mechanism to act as a further incentive.

Second, I can look to the States and require, that, since some 27 have received grants and assistance to build these training sites, and those facilities are supposed to be used to train operators and maintenance people, that can act as an incentive on my part to deny future grants or further funding of those kinds of facilities if they are not, indeed, carrying out the requirements.

The last thing I can do—and this is the way the system is supposed to work—to determine whether or not that discharge is meeting the requirements of the permit. We have just gone through a litany of ills with that system, but if I will enforce that permit, the plants and operators will have to do what they are supposed to do.

Mr. **Levitas**. I won't pursue that any further; I will just refer you to the comments and observations and recommendations on

REDUCING THE NUMBER OF MAJOR MUNICIPALS IN SIGNIFICANT NONCOMPLIANCE WITH CS AND/OR IEL

(Including Major 92-500 Municipals)

REGION	# Permittees in SNC with CS/IEL As of 6/30/83	1st Quarter			2nd Quarter			3rd Quarter			4th Quarter		
		Target (Compl. + Enf.)	Actual		Target (Compl. + Enf.)	Actual		Target (Compl. + Enf.)	Actual		Target (Compl. + Enf.)	Actual	
			Compl.	Enf.		Compl.	Enf.		Compl.	Enf.		Compl.	Enf.
REGION VII													
EPA													
NPDES States	6	0	1	0 ( )	0		( )	2		( )	6		( )
EGION VIII													
EPA	17	0	3	0	3			10			17		
NPDES States	19	1	6	0 ( )	5		( )	10		( )	19		( )
REGION IX													
EPA	/ 3	0	0	0	0			0			3		
NPDES States	28	6	2	11 (1)	13		( )	18		( )	28		( )
REGION X													
EPA	2	1	1	0	1			2			2		
NPDES States	2	0	0	2 ( )	0		( )	1		( )	2		( )
*NATIONAL													
EPA	135	11 19	24	7	54			88			135		
NPDES States	235	23 23	47	24 4 ( )	59		( )	121		( )	235		( )
TOTAL	370	34 42	71	31 4 ( )	113		( )	209		( )	370		( )

( ) Number of NOVs issued to NPDES States by EPA.

*Top lines do not include Region VI, which did not submit the 1st quarter report.

REDUCING THE NUMBER OF
MAJOR FEDERAL FACILITIES IN SIGNIFICANT NONCOMPLIANCE WITH FEL

REGION	# Permittees in SNC with FEL As of 6/30/83	1st Quarter Target (Compl. + Add.)	1st Quarter Actual Compl.	1st Quarter Actual Add.	2nd Quarter Target (Compl. + Add.)	2nd Quarter Actual Compl.	2nd Quarter Actual Add.	3rd Quarter Target (Compl. + Add.)	3rd Quarter Actual Compl.	3rd Quarter Actual Add.	4th Quarter Target (Compl. + Add.)	4th Quarter Actual Compl.	4th Quarter Actual Add.
REGION I EPA	0												
NPDES States	0			( )			( )			( )			( )
REGION II EPA	0												
NPDES States	2	0	0	0 ( )	0		( )	0		( )	2		( )
REGION III EPA	1	1	1	0	1			1			1		
NPDES States	2	0	0	0 ( )	1		( )	2		( )	2		( )
REGION IV EPA	5	0	0		1			+2			~~3~~5		
NPDES States	5	12	1	( )	~~0~~1		( )	3~~4~~		( )	+5		( )
REGION V EPA													
NPDES States	3	1	2	0 ( )	2		( )	3		( )	3		( )
REGION VI EPA	5	1			2			3			5		
NPDES States				( )			( )			( )			( )

( ) Number of NOVs issued to NPDES States by EPA.

*Change in commitment

REDUCING THE NUMBER OF MAJOR FEDERAL FACILITIES IN SIGNIFICANT NONCOMPLIANCE WITH FEL

REGION	# Permittees in SNC with FEL As of 6/30/83	1st Quarter Target (Compl. + Add.)	1st Quarter Actual Compl.	1st Quarter Actual Add.	2nd Quarter Target (Compl. + Add.)	2nd Quarter Actual Compl.	2nd Quarter Actual Add.	3rd Quarter Target (Compl. + Add.)	3rd Quarter Actual Compl.	3rd Quarter Actual Add.	4th Quarter Target (Compl. + Add.)	4th Quarter Actual Compl.	4th Quarter Actual Add.
REGION VII													
EPA													
NPDES States	0			( )			( )			( )			( )
REGION VIII													
EPA	1	1	1 ~~0~~	0	1			1			1		
NPDES States	1	0	0	0 ( )	0		( )	0		( )	1		( )
REGION IX													
EPA	3	0	0	0	0			0			3		
NPDES States	0			( )			( )			( )			( )
REGION X													
EPA	0												
NPDES States	0			( )			( )			( )			( )
*NATIONAL ** EPA	10	2 3	1	0	4			5			10		
NPDES States	8	1 1	2	0 0 ( )	3		( )	5		( )	8		( )
TOTAL	18	3 4	3	0 0 ( )	7		( )	10		( )	18		( )

( ) Number of NOVs issued to NPDES States by EPA.
*Top lines do not include Region VI, which did not submit the 1st quarter report.
**No totals include Region IV, which did not submit any data on Federal facilities.

REDUCING THE NUMBER OF MAJOR FEDERAL FACILITIES IN SIGNIFICANT NONCOMPLIANCE WITH CS AND/OR IEL

REGION	# Permittees in SNC with CS/IEL As of 6/30/83	1st Quarter			2nd Quarter			3rd Quarter			4th Quarter		
		Target (Compl. + Add.)	Actual		Target (Compl. + Add.)	Actual		Target (Compl. + Add.)	Actual		Target (Compl. + Add.)	Actual	
			Compl.	Add.		Compl.	Add.		Compl.	Add.		Compl.	Add.
REGION I													
EPA	0												
NPDES States	0			( )			( )			( )			( )
REGION II													
EPA	0												
NPDES States	1	0	0	0 ( )	0		( )	0		( )	1		( )
REGION III													
EPA	0												
NPDES States	0			( )			( )			( )			( )
REGION IV EPA	2	0			0			0			2		
NPDES States	2	0		( )	0		( )	2		( )	~~0~~ 2		( )
REGION V													
EPA													
NPDES States	1	0	1	0 ( )	0		( )	0		( )	1		( )
REGION VI													
EPA	0												
NPDES States				( )			( )			( )			( )

( ) Number of NOVs issued to NPDES States by EPA.

REDUCING THE NUMBER OF MAJOR FEDERAL FACILITIES IN SIGNIFICANT NONCOMPLIANCE WITH CS AND/OR IEL

REGION	# Permittees in SNC with CS/ IEL As of 6/30/83	1st Quarter			2nd Quarter			3rd Quarter			4th Quarter		
		Target (Compl. + Add.)	Actual		Target (Compl. + Add.)	Actual		Target (Compl. + Add.)	Actual		Target (Compl. + Add.)	Actual	
			Compl.	Add.		Compl.	Add.		Compl.	Add.		Compl.	Add.
REGION VII													
EPA													
NPDES States	0			( )			( )			( )			( )
EGION VIII													
EPA	0												
NPDES States	1	0	0	0 ( )	0		( )	1		( )	1		( )
REGION IX													
EPA	0												
NPDES States	1	0	0	0 ( )	0		( )	0		( )	1		( )
REGION X													
EPA	0												
NPDES States	0			( )			( )			( )			( )
*NATIONAL													
EPA	0												
NPDES States	4	0	1	0 (0)	0		( )	1		( )	4		( )
TOTAL	4	0	1	0 (0)	0		( )	1		( )	4		( )

( ) Number of NOVs issued to NPDES States by EPA.

*No totals include Region IV, which did not submit any data on Federal facilities.

this very point which we made in our report in 1981, 97-30, where we dealt with this in some detail, the enforcement, the operation and maintenance problem, and the tools that EPA has under your regulations 40 CFR 30.30, 340.1.

About withholding, certainly, funding in the case of someone who is trying to get us to build their plant twice, I am convinced that this is a very important area, and again, if the municipalities think you are serious about it, they will raise it on their level of priorities. It doesn't get much attention at the local level these days because they do not think that EPA is serious about it.

The other question I was going to ask you about in terms of failure to make permits, and I don't want to get into a broad discussion of it but just to ask you, have you had occasion to focus on the question of infiltration and inflow as a significant factor in failure to meet permits?

Mr. RAVAN. Mr. Chairman, I have not focused on that particular aspect as a part of the overall problem since I returned to EPA.

Mr. LEVITAS. I didn't think you had had a chance to. The reason I mention it, Mr. Ravan, is that it is significant since the time you were at EPA previously and today that you are back, there has been a great deal more information on that problem that was not available, frankly, at the time you were there.

Mr. RAVAN. Yes, sir.

Mr. LEVITAS. I simply urge you to have some of your people look at this again. I make reference to our last report on the subject, but some of the information we received at that time was extremely impressive in terms of the amount of cost that is built into plants based upon treating rainwater, and when permits are not met, the extent to which I&I has been a major contributing factor.

Parenthetically, the conclusion I drew from that, and I think Mr. Molinari as well, is that if it is as significant a factor as we heard, then it is an inexpensive way of making tremendous improvements and savings. So I just put that in for you to look at.

Let me just conclude at this point with this question on a new subject. Before these hearings, we were made aware, Mr. Ravan and Ms. Hanmer, of a report by EPA's Inspector General entitled "Management Implication Report," which, without objection, I will make a part of the record at this time, which indicates that region VI was following headquarters' directions and policies that had not been officially adopted which resulted in an under-reporting of noncompliance.

I would like you, if you could, to explain what was supposed to have been going on, as you understand it, and second, why this change in policy by your predecessor, Mr. Eidsness, was triggered in the first place.

You may have referred to that in an earlier statement.

Third, why it was not officially adopted, that policy that is referred to in this report. And fourth, why was it being used if it was not properly adopted? And did it have the effect of making the numbers of compliers look better?

[The Management Implication Report referred to follows:]

MANAGEMENT IMPLICATION REPORT, REVIEW OF REGION VI RESPONSIBILITIES UNDER 40 CFR SECTION 122.18

PURPOSE AND SCOPE OF REVIEW

We have completed a limited review of Region VI responsibilities to ensure compliance with Federal regulations and national policy regarding industrial and municipal effluent discharge requirements.

The purpose of our review was essentially to determine the validity of allegations received by the Office of Investigations that personnel in Region VI Water Division falsely reported during the third and fourth quarters of 1982, the number of industrial and municipal facilities in noncompliance with effluent discharge levels under the Federal Water Pollution Control Act, commonly referred to as the Clean Water Act (CWA).

During our review, we also received additional allegations that Administrative Orders (AOs) were being used in Region VI to decrease the instances of noncompliance with National Pollutant Discharge Elimination System (NPDES) permit standards, and they used AOs to impose administrative penalties for violations of the discharge requirements in a pretreatment program.

As part of our inquiry into the above allegations, we reviewed official files, records, and documents and examined regulations pertaining to Region VI Quarterly Noncompliance Report (QNCR). We also interviewed staff from the Region's Water Division and Headquarters Office of Water Enforcement.

It should be noted that the scope of our investigation was limited to the above allegation and did not include an evaluation of all of Region VI reporting responsibilities under the CWA and implementing regulations.

The review was conducted at the Regional office in Dallas, Texas and EPA Headquarters Office of Water Enforcement. Our field work began on August 19, 1983 and was completed on September 23, 1983. We discussed the results of our review on October 26, 1983 with an attorney from the Office of General Counsel and the Acting Assistant Administrator for Water and received her formal written response on November 14, 1983. A copy of this response is contained in Attachment A.

BACKGROUND

As part of the Federal Water Pollution Act of 1972 (Public Law 92-500) industrial and municipal facilities must comply with effluent discharge levels as specified in their NPDES permits.

These facilities (permittees) are required by Federal Regulation (40 CFR 122.62(h)(i)(2)) to submit self-monitoring reports to the Agency not less than once a year; however, such reports are normally submitted each quarter.

Facilities in noncompliance with the Act's discharge requirements are published by the Agency in the QNCR. Guidelines for the QNCR are contained in the Code of Federal Regulations (40 CFR 122.18), dated July 1, 1982.

These regulations require that instances of noncompliance are to be reported in successive QNRSs until the noncompliance is resolved. These include (1) failure to complete construction elements. (2) modification to compliance schedules, (3) failure to complete or provide a compliance schedule or monitoring reports, (4) deficient reports, and (5) noncompliance with other permit requirements.

The purpose of the QNCR is to provide the Agency and the public with accurate statistics on noncompliance and is used by Region VI Water Division as one measure of the Agency's success in ensuring that facilities are meeting safe discharge levels.

SUMMARY OF RESULTS

We found no wrongdoing on the part of Region VI employees in reporting the number of facilities in noncompliance with effluent discharge levels under the Act. Nevertheless, Region VI has not effectively discharged its responsibilities under 40 CFR 122.18 to report facilities in noncompliance. Deficiencies noted in the Region's QNCR process include use of:

An undated, unsigned draft memorandum to set national policy on facilities to be reported on; and

Administrative Orders (AOs) to decrease instances on noncompliance and to impose unauthorized administrative penalties.

We believe that because of these deficiencies, the Region's QNCR process is not completely accurate in that it does not measure noncompliance as published in 40 CFR 122.18. The use of unofficial unpublished standards to measure noncompliance has given too much reporting discretion to management in that the QNCRs may be inaccurately reflecting the success of the Water Division in controlling effluent levels.

EPA HAS NOT FULLY DISCHARGED ITS REGULATORY RESPONSIBILITIES

EPA did not effectively discharge its responsibilities under 40 CFR 122.18. Interviews with Region VI Water Division staff revealed that an undated, unsigned memorandum issued from the former Assistant Administrator for Water, Frederic Eidsness, to Regional Administrators and State NPDES Program Directors entitled "Definition of Significant Non-compliance for NPDES Program" is being used as national policy. This memorandum created the term "significant noncompliance" (SNC) as distinguished from noncompliance. Under this definition only those facilities in SNC are reported in the QNCR. This has resulted in a 15 percent reduction in the number of facilities listed in the QNCR between June and December 1982.

This definition is being used to identify those permit violations which are of sufficient magnitude and/or duration to be considered of major concern to the regulatory agency, to report national levels of compliance with the NPDES program, and to evaluate its progress.

Interviews with members of the Water Division staff, Region VI, disclosed that AOs were being used to decrease the instances of noncompliance. They told us the Region issued AOs which contained interim discharge limits that matched or exceeded the effluent levels being discharged by a facility. Once the AO is issued, the facility is removed from the QNCR. This procedure produced a false picture of the success rate in complying with NPDES permit requirements, since the issuance of the AP does not in itself produce compliance.

A review of Region VI AOs determined that the Region is using AOs to impose administrative penalties in a pretreatment program. The City of Gainesville, Texas provided a copy of an "Order of Consent" citing Section 309(a)(3) and (a)(4) as authority to impose a $100 per day fine for failure to submit a request for pretreatment program approval. No expressed authority to institute administrative penalties is contained in this section.

On October 26, 1983, we met with Rebecca Hanmer, the then Acting Assistant Administrator for Water (AAAW) and Colburn Cherney, an Attorney from the Office of General Counsel (OGC) to discuss the results of our review. These officials generally agreed with the results of our review. However, Water Program officials expressed concern with policy and legal issues regarding revising the requirements for the QNCR. A secondary concern was the feasibility of separating new noncompliance reporting requirements from other regulation revisions and proposing it on a faster schedule.

MANAGEMENT RESPONSE

We provided copies of our draft report dated October 4, 1983 to both the AAAW and the Associate General Counsel for Enforcement for their detailed review and consideration. The AAAW and the Region VI Administrator provided written comments which we have summarized below. However, to gain a complete understanding of management's position on all issues discussed, the reader should review their responses in their entirety which are included as attachments A and B to this report.

Both of these officials expressed concern that our final report strongly emphasize that the IG found no evidence to substantiate the allegation that specific personnel were falsely reporting the number of industrial and municipal facilities in noncompliance with EPA water effluent discharge levels under the CWA.

The Regional Administrator stated that it was the Region's understanding that the use of SNC represented a major step forward on the part of the Agency for consistency in compliance rate reporting across the country. He further stated that it is appropriate to have a consistent definition of SNC and recommended the Agency move to incorporate a standard definition in the regulations.

The AAAW was in complete agreement with the report's recommendations that focus on the need to establish clear and specific criteria for determining which permittees should be listed in the QNCR and, if listed, when such permittees should be removed.

She stated that new reporting requirement (SNC) was developed in an attempt to resolve ambiguous and difficult to understand criteria for permit conditions and that the criteria had been subjected to widely varying interpretation and damaged the credibility of the Agency's national compliance statistics. She also stated that the suggested use of these new reporting requirements was intended to provide a more meaningful QNCR.

In addition, the AAAW stated that at the time the new reporting requirements were suggested, it was anticipated that revisions to the regulation would be published shortly. Because of unforeseen delays, the revisions have still not been published.

Both officials commented on the use of AOs to decrease the instances of noncompliance. The Regional Administrator stated the Region's use of AOs is identical to all other regions and is consistent with national policy. In addition, the AAAW said removal of a facility from a QNCR is not based on the fact that the facility is in compliance with less stringent discharge limitations, rather it was based on the fact that an enforcement action had been taken. She also stated this decision was made in an attempt to account for facilities that, at one time, were out of compliance with permit conditions but that are now in compliance with an AO.

The Regional Administrator and the AAAW both disagreed with our findings that AOs are being used to impose administrative penalties. They recognized that neither Section 309 of the CWA nor Section 106 of Comprehensive Environmental Response and Compensation Liability Act (CERCLA) provides for administrative penalties; however, both believed the orders on consent will obtain compliance and no penalties will be collected. Both the Region and the Water Division expressed doubt that an OIG audit would find any great problems within the Region. Both stated an audit conducted by the Office of Water Enforcement concluded the Region was proceeding in the right direction.

OIG COMMENTS

We have evalauted management's response to our findings and recommendations, and where we considered it appropriate, we revised our report to reflect their comments.

The Office of Investigations has reviewed the matter with the Counsel to the Inspector General. He has concurred with our findings and recommendations contained in this report.

Both the AAAW and Regional administrator questioned the allegation that personnel in the EPA Water Division, Region VI, were falsely reporting the number of industrial and municipal facilities in noncompliance with EPA water effluent discharge levels under the CWA.

We agree. No specific personnel were found to have committed wrongdoing. Region VI and the water program officials both stated there was no evidence in the report that any personnel in Region VI were reporting data which was inconsistent with national procedures. The entire national procedure is in question. Region VI was the focal point only because we received an allegation concerning its reports. The fact that these reports match the national procedures does not make them correct.

The establishment of national policy and procedure based on the undated, unsigned draft memorandum of a former EPA official is in violation of 40 CFR 122.18 and the Administrative Procedures Act, Title 5 USC. The creation of SNC dates back to February of 1982. The definition which was developed by a Regional/Headquarters/state work group was circulated for review and comment, redrafted, and sent to the Regions in draft to implement. The Water Program response to our draft report stated: "Because of unforseen delays, the revisions have still not yet been published." This is 21 months after SNC was created and over 14 months since its implementation in Region VI.

The second issue contained in our draft report dealt with the use of Administrative Orders to produce a false picture of success in reporting compliance. Region VI stated in its response that the "use of AOs is identical to use in all other Regions and is in keeping with national policy." Water Program's response to this issue was contained in three paragraphs that referred to the Enforcement Management System (EMS), a draft of the Water Compliance/Enforcement Strategy and a preliminary evaluation of the use of AOs. However, none of the above answers the allegation and documentation already provided. When an AO is granted, a facility is removed from the QNCR. The facility is then considered to be in compliance, even though the final permit is still being violated. The OIG disagrees with the Agency's national policy and handling of this issue.

The final allegation concerns the improper use of AOs to impose administrative penalties. Both Region VI and Water Program officials acknowledge the use of an "Order on Consent." The Order provides for a $100 a day fine to the City of Gainesville, Texas citing Section 309 (a)(3) and (a)(4) of the CWA as authority to impose a fine for failure to submit a request for pretreatment program approval. Both acknowledge that there is no authority contained in Section 309 of the CWA to impose administrative penalties. Region VI states: "These Orders used in the proper circumstances will constitute an effective compliance tool."

We partially agree with this statement. The use of administrative penalties may prove to be an effective tool; however, the independent actions of a single region without proper Headquarters approval based upon legal authority could lead to embarrassment for the entire Agency.

RECOMMENDATIONS

We recommend that the Administrator:

1. Direct the Agency to review the use of unsigned, undated draft memorandum as national policy.
2. Assure that internal guidelines are not in conflict with published rules and regulations; and that all changes to regulations be accomplished within prescribed procedures.
3. Direct that AOs not be issued to justify further removal of entities from the ONCR.
4. Hold Regional Administrators accountable for ensuring that methods used to enforce regulations are within legal authority and uniformily applied.

Mr. **Ravan**. Let me handle as much of that as I can, and I will call on Ms. Hanmer to fill in some of the details.

First of all, the Inspector General obviously did make the investigation based upon allegations as implied. He furnished the Agency, as he is supposed to, and Congress the report. Mr. Alm has acted on that report, and I have in one instance.

First of all, the Inspector General found no wrongdoing with regard to the lack of proper counsel from headquarters. As to the facts of the instance, I think too much was made of the fact that a memorandum was not signed. The memorandum does exist. It did exist. It was handed out in an official meeting. The assistant administrator responsible for the area was there. He blessed, if you will, the piece of paper.

The Division Directors took that piece of paper away and acted upon it. It would be hard to conclude that that was not an official instruction just because he didn't sign it. It might have been a slip or it may have been intentional. I don't know and don't care to question.

Mr. Alm has corrected that and he has taken the action recommended by the Inspector General. Further, I have cleared that item away. I have put out my specific instructions with regard to, in this particular case, the definition of significant noncompliance and how you are to use it. And I did sign the memorandum and I stand by it.

It was an unfortunate incident and one that needed looking into. One I think we have now cleared away. I do not believe there was any intentional use of the memorandum to underreport, misreport or otherwise. If you did use the memorandum as it was implied to be used, your numbers would change because the definition of significant noncompliance was involved.

I will be happy to submit both the report, our answer and corrective actions.

Mr. **Levitas**. Fine. As I noted previously, it has been made part of the record. Ms. Hanmer, do you want to supplement that in any way?

Ms. **Hanmer**. I don't believe so. The issue involved the difference between the current definition, which we are calling significant noncompliance, and the more general definition contained in our present regulations, which has been subject to varying interpretation. Under some interpretations, there was less reporting, and under other interpretations there was more reporting.

So, as Mr. Ravan has pointed out, it clarified the proper use of that definition under our present regulations and in the changing regulations.

Mr. **LEVITAS**. One last question to you, then. As I understand it, you now have the responsibility of running the permit program.

Ms. **HANMER**. Yes, sir.

Mr. **LEVITAS**. What procedures or changes in procedures do you plan to institute that will avoid the problems that have plagued this process in the past?

Ms. **HANMER**. We started working on that by getting some more resources for the people in the field. We have also been working at giving them much more specific direction about what is supposed to be achieved in this program. And as Mr. Ravan pointed out, we have specific commitments for permit issuance and for compliance—effective compliance actions that we are expecting people to take.

Someone told me once that the MIT motto is, "The work that gets done is the work that is inspected rather than expected," So very soon I will be on the road nagging the regions and in key areas, some of the States, about how they are coming along in achieving the commitments they have made for permit issuance and for follow-up on enforcement actions.

Furthermore, my staff will be conducting a comprehensive audit of how the regions have been using our enforcement management system, which lays out guidance on how we are supposed to react to certain kinds of violations, both insignificant and significant. It provides guidance on how they are supposed to be reviewing the information. It also requires them to set specific time lines for how long they wait for things to happen before they initiate an action.

So we will be doing a comprehensive audit and acting at both headquarters and the regions on the basis of that. It is all planned for this coming year.

Mr. **LEVITAS**. This fiscal year?

Ms. **HANMER**. Yes, sir. In fact, this summer. This spring.

Mr. **LEVITAS**. Fine.

I would request that after you have made your first swing around out in the field, to share with us in writing so we can make it a part of this record, a report on what you found, has there been improvement, what are the problems that still persist, and what you propose to do about it.

I think from our oversight point of view, the earlier on we can take a look at that, the more likely we are to be able to work cooperatively and see that you get the necessary congressional support that you may need.

I can't speak for everybody on this committee, much less for the Congress, Mr. Ravan, but I will say this. As far as this Member of Congress is concerned, in terms of the actions that you must take against noncompliers, municipal noncompliers, the efforts that you take to make sure that the village idiot does not drive the Rolls Royce, whether he is the mayor's second cousin or not, as far as I am concerned as a steward of the public funds—money, in this matter—I will support you on that. I will not only support you on it but expect you to do it. I think it has got to be done.

Does EPA have a definition now of what is significant noncompliance?

Mr. **Ravan**. Yes, sir, we do.

Mr. **Levitas**. What is that definition?

Mr. **Ravan**. I will ask Ms. Hanmer to quote that for you. I must admit it is not an easy definition. It is a definition we have worked out in agreement with the States, who are, of course, full partners in this process. It has elements in it that get to the major discharges, both municipal and industrial, and it attempts to identify the severity of the discharge component, which is to say it is not necessarily as bad to go out with conventional waste as it is with a toxic material, and that was our attempt in our definition.

I will let Ms. Hanmer quote that to you.

Ms. **Hanmer**. There are six basic elements. The one that we have been talking about a little bit is the element that deals with failure to meet effluent limits. We say that you are in significant noncompliance if you exceed your monthly average permit limit for any parameter twice in 6 months by a factor of 120 percent for any toxic pollutant and a factor of 140 percent for any conventional pollutant. Those are the so-called technical review criteria.

You would also get on the list if you had four violations of the same parameter in 6 months with no threshold. Furthermore, you could also get on the list for any kind of short-term effluent violation crossing a water quality problem; this is a discretionary element, and we don't have a number for it. If there is a water quality impact, you would be listed even if it doesn't satisfy the other criteria.

In addition to effluent violations, we include slippage of compliance schedules, any violation of any enforcement order, including an administrative order. For example, if you have been given an administrative order and you violate anything in it, you are automatically put on this list. Again, you were on the list, you got your administrative order and violated it, so you are back on the list again. A failure to submit reports within a specified period of time and any unpermitted discharges or unauthorized bypasses automatically put you on the list.

It is somewhat more complex than that, but that is a summary of it.

Mr. **Levitas**. Why don't you submit for the record the entire instrument.

Ms. **Hanmer**. Certainly.

Mr. **Levitas**. I think it would be very helpful for us to have it.

[Information received from Ms. Hanmer follows:]

Definition of Significant Noncompliance in the NPDES Program

Facilities violating requirements of previous enforcement actions, permit effluent limits or permit compliance schedules, as indicated below, are considered in significant noncompliance.

I. PREVIOUS ENFORCEMENT ACTION VIOLATIONS

Violation of any requirement, other than a schedule requirement.

For a nonmunicipal facilities or municipal facilities not in the Federal grants process, violation of any schedule requirement for more than 90 days.

For municipal facilities in the Federal grants process, violation of any schedule requirement which EPA, after reviewing the entire grant process, considers unacceptable, reqardless of the period of violation.

II. PERMIT COMPLIANCE SCHEDULE VIOLATIONS

Same as for enforcement action schedules above.

III. PERMIT EFFLUENT LIMIT VIOLATIONS

Single-event (e.g., Daily Maximum) and Short-term (e.g., 7-Day Average) Violation.

Discretion of NPDES Program Director.

Generally, any effluent violation which has the potential to cause or has actually caused adverse environmental effects (e.g., fish fills, oil, sheens) or pose a human health hazard (e.g., spills or carcinogenic, radioactive or mutagenic substances).

Monthly-Average Violations:

Violation of monthly-average permit limits, for any two months in a six-month period, of:

Inorganic and oxygen-demanding pollutant limits (e.g., BOD, COD, TSS and nutrients) by more than 40%.

Toxic pollutants limits (e.g., heavy metals, cyanide and organics) by more than 20%.

Chronic Violations:

Where monthly-average limits are violated but not by the above percentage, violation of monthly-average limits for any four months in a six-month period.

Additionally, the Director of an NPDES Program may consider *any* instance of noncompliance he/she considers significant as significant noncompliance.

IV. REPORTING VIOLATIONS

Failure to submit reports within 60 days of the date required.

Submission of Discharge Monitoring Reports that are so deficient as to cause the regulatory agency confusion in assessing compliance.

Mr. **Levitas**. When was that definition adopted?

Ms. **Hanmer**. It was accepted by a task force in early 1982 and has been evolving since then. Right now it is in guidance form in the memorandum that has been signed by Mr. Ravan. It will also be an official change to our regulations which we had planned to propose in about 1 month.

Mr. **Levitas**. That is very encouraging.

I have no further questions.

Mr. **Molinari**. Would you mind repeating that? You said six elements. Begin with the last one or the one before, regarding administrative orders.

Ms. **Hanmer**. Any violation of an enforcement order. There were six categories: failure to report within a certain time; any violation of an enforcement order, either a consent decree or an administrative order; a slippage on your compliance schedule; a violation of your monthly effluent limit; any short-term violation of the effluent limit that has a water quality impact, even if it doesn't satisfy the other criteria; and any unpermitted discharges or unauthorized bypasses.

Mr. **Molinari**. OK. I just have one last question, Mr. Ravan, and that gets back to the subject of administrative orders. EPA's Inspector General's report concluded that there was no wrongdoing on the part of the Region VI employees in reporting the number of facilities in noncompliance. They went on to say, nevertheless, that Region VI has not effectively discharged its responsibilities in that they used AO's to decrease instances of noncompliance. That is the charge made by the Inspector General.

Is there any move afoot within EPA to change the use of administrative orders? Is that under study? Ms. Hanmer?

Ms. HANMER. Part of the audits we are going to be doing will include looking at consistency, quality and timeliness of administrative orders as one of the areas of greatest attention. The reason is not so much because of allegations of wrongdoing as it is that this is our fundamental most useful enforcement tool—if we use it quickly and well.

Because of the fact that it is a very timely mechanism, it would be a more useful mechanism if we were able to attach penalties to those administrative orders, but it is our basic enforcement device.

Mr. MOLINARI. By the way, do they use computers to track this information? We learned yesterday that the State of New Jersey has computers and that GAO in the study was able to quickly come up with material and conclusions by the computerized data that was available to them. In the other States that don't have computers it took a long time to sift through the files to come up with the same base of data.

Is there Federal funding under your programs for States that want to obtain computers for this particular area?

Mr. RAVAN. Yes, Mr. Molinari. It was hard for me to believe, as I took up the mantle again, that it is 1984, and the computer systems, comparable to the systems we had in the grants programs are not available as a tool in the enforcement program.

We are making good progress now, I would say. Not excellent progress, but good progress, toward the use of a computer system to act as a tool for us in tracking of compliance and permit, conditions. Ms. Hanmer, if you will help me, how many States participating?

Ms. HANMER. It is now 13, with 5 of those being half promises.

Mr. RAVAN. There are 13 States participating, and 5 if these are about halfway convinced that that is the right thing to do. Eventually I think we will get there and it would be an eligible item under the section 106 grants program to the States that we provide.

Mr. MOLINARI. I have no further questions, Mr. Chairman.

Mr. LEVITAS. Thank you very much, Mr. Ravan, for your testimony today.

I think Mr. Molinari indicated that he feels, and I share with him a sense of optimism that those things you are committed to today represent a distinct departure from the past and from, most especially, your immediate predecessors in these positions, to be quite frank about it.

The truth of the matter is, as far as I am concerned, my patience about this whole thing is really at an end. I have heard the/same testimony so many times about noncompliance, about the causes of noncompliance, about what was going to be done about it, and then we get the next report in and it is just exactly like the one before.

I happen to know both of you people individually, personally, in the sense that I have watched your performance in other areas, and it could be that that in some way makes me believe more than I would in other instances; but I really believe you are not only both committed to it but you have the capability to do it. So therefore, if you don't do it, I am going to want to know why. But you are at the unfortunate point of being in a period at which there is no more patience on my part, so we will be looking at your performance from this point forward.

I think you can get the job done. If it is in Congress that you need support, then come to us. If it is elsewhere, let us know. But I think that we are talking about what potentially is the largest public works program in the history of the United States. We are talking about the quality of the waters of this Nation, and we are talking about public health, and all of those things will be either improved or adversely affected by what you do from this point forward. But I think it strings out, and the time for producing results is at hand.

I look forward to working with you and I wish you both well in your undertaking.

There being no further business to come before the subcommittee, the subcommittee stands adjourned.

[Whereupon, at 12:58 p.m., the subcommittee was adjourned.]

IMPLEMENTATION OF THE FEDERAL CLEAN WATER ACT

(EPA Enforcement of the National Pollution Discharge Elimination System Permit Program)

WEDNESDAY, SEPTEMBER 19, 1984

House of Representatives,
Subcommittee on Investigations and Oversight,
Committee on Public Works and Transportation,
Washington, DC.

The subcommittee met at 10:52 a.m., in room 2253, Rayburn House Office Building, Hon. John B. Breaux presiding.

Mr. Breaux [presiding]. The subcommittee will come to order.

I'll go ahead and get the hearing started, so that we can move on. Congressman Levitas is on the floor, waiting to present a statement, and will be here as soon as he can. Rather than delay, we will start.

This morning, the Subcommittee on Investigations and Oversight of the Committee on Public Works and Transportation meets for the purpose of obtaining an update on the progress being made by the U.S. Environmental Protection Agency in carrying out the enforcement provisions of the Federal Clean Water Act.

When Congress enacted amendments to the Clean Water Act in 1972—which it did, by the way, by overriding the President's veto—one of the key provisions included in the law was the creation of a nationwide regulatory system for ensuring that the law's minimum cleanup requirements would be met by municipal and industrial wastewater dischargers.

This system, the National Pollutant Discharge Elimination System [NPDES], which we know as the EPA Permit Program, is the law's primary mechanism for moving the country toward the law's clean water goals.

Everyone that discharged pollutants—municipalities and industries as well—was to be in the system. Everyone in the system was to have a permit. Every permit was to contain numbers, or effluent limits, that were to be met. And everyone with a permit was supposed to go forward and build the necessary treatment works, or stop using the toxic chemicals that couldn't be properly treated, so that eventually, all of the numbers in the permits would be achieved and we would have clean water.

Congress recognized, however, that if this system was to work, it had to be enforced. If it was to produce results, those in the regulated community had to know that if they did not comply with the law, they would be penalized.

In short, if this law was to be effectively carried out, those responsible for its implementation should not only have encouraged compliance, they should have actively discouraged noncompliance.

But, has this been the case? The record before this subcommittee more than suggests that it has not.

Year after year, in report after report, and at hearing after hearing—the most recent of which was 6 months ago—we have been told that most dischargers, both industrial and municipal, violate their NPDES discharge permits far too often.

We have also been told, time and time again, that 25 to 30 percent of most major dischargers—particularly municipal dischargers—are often seriously out of compliance with the law for months at a time, even years. And we have seen that in some instances, even the application of financial penalties has had only limited, if any, effect.

This record suggests to me that perhaps the real problem lies not just in the lack of resources and not in the absence of adequate statutory enforcement tools, but rather, it suggests that what is truly lacking is a commitment to strong enforcement. Like the old saying: "The proof of the pudding is in the eating," the proof of a true commitment to enforcing the Clean Water Act, it would seem to me, would be in the record of results. Those results do not exist.

I look forward to hearing from our witnesses today.

Are there any other comments by any of the other members?

Mr. MOLINARI. Mr. Chairman, I have a statement.

Mr. BREAUX. Without objection it will be admitted into the record.

Mr. MOLINARI. Our earlier hearing on this same subject centered around a GAO report issued December 2, 1983. That report reached several disturbing conclusions concerning the implementation of the Wastewater Control Permits Program for Municipal and Industrial Dischargers. Perhaps most disturbing is the fact that similar findings concerning the inadequacy of the program spanned a 10-year period. With the change in leadership of the Environmental Protection Agency, I am hopeful that today's witnesses will provide us the evidence that there is, indeed, improvement.

Of concern is the large percentage of dischargers that are in significant noncompliance, as well as the thousands and thousands of permit applications still awaiting processing and those permits that will expire this year.

At the hearing this past March held by the subcommittee, I was very appreciative of the candor that Mr. Jack Ravan, Assistant Administrator for Water for the U.S. Environmental Protection Agency. He testified at that hearing—and I quote:

> Regardless of how one counts, regardless of whether you leave the permitee in a particular category for three months, twelve months, or eighteen months, the trend is, in fact, the same. We continue to see as significant degree of non-compliance by these permitees and we continue to see the EPA and the states falling behind in their workload.

This, of course, raises questions about EPA's commitment to allocate resources in such a way as to turn the situation around.

Of particular interest today is the statement by Mr. Ravan last March that it was EPA's goal to bring 1,100 noncompliant major municipal and industrial dischargers back into compliance or to subject them to formal enforcement actions by the end of this year.

At the time I thought that goal was very ambitious, and I am, indeed, interested to hear how that goal is being addressed.

I might add, for the record, that I had an extensive conversation yesterday with representatives from region 2. We received a rather optimistic report—both my staff and myself—on the progress that they alleged has been made during the past 6 or 8 months. They did indicate, however, a rather serious problem in that there seems to be a pervasive problem with judges who have a reluctance to impose fines or to take action where municipalities are involved.

Mr. Chairman, I am very anxious to hear some encouraging news about this program for a change. If we continue to receive bad news about the Water Pollution Control Permit Program, then I fear that we may need to make a major reassessment of the program in order to find ways in which to improve its performance. It may be that a transfer of functions to another agency or a major restructuring of the agency might be the answer. That might sound radical, but it might take that type of change to produce the results that we all want to achieve.

Mr. Chairman, with your approval, we have been joined by a member of the full committee, Mr. Daub, the gentleman from Nebraska, who has a brief opening statement.

Mr. **Breaux**. The gentleman from Nebraska, Mr. Daub.

Mr. **Daub**. Thank you very much, Mr. Chairman. I am very pleased to be here today. I won't take but a minute for my formal opening statement.

I want to say that I served on Nebraska's Environmental Control Board for 2 years prior to coming to Congress, and had a chance to get very well acquainted with particulate emissions, sludge management, and a lot of the problems we have that relate to clean air and clean water in RCRA. And I have enjoyed my Public Works Committee service.

In watching our city develop its primary and secondary wastewater treatment facilities, a particular problem has arisen that just, very, very happily, fits into the subcommittee's hearing. Some of you, I'm sure, recall the oversight hearings that you held starting in 1981. I have read that report, and there is a particular part of that report that talks about the very kind of problem that we are now seeing with our plant in Omaha, NE. So, it is a distinct privilege for me to attend your subcommittee hearing today, which will focus on industrial and municipal wastewater dischargers.

Although I'm not a formal member of this subcommittee, the tour that I took of the municipal treatment plant in my district, on Monday, has made the hearing of particular interest to me. The Missouri River—or South Omaha Wastewater Treatment Plant that I toured has been the subject of numerous constituent calls to my office. Despite the city having primary responsibility over the operation and maintenance of that facility, having been a member of the environmental control board of my State, as I said, prior to coming to Congress, I have been particularly sensitive to the problems and needs of this area.

The focus of the complaints have been on the odor problems associated with the plant that is placed in such close proximity to residential neighborhoods. Talking to city engineers in Omaha, I am confident that the city is doing a fine job of trying to alleviate the problems of this plant. However, as of today, I have written to Bill Ruckelshaus, asking him to send someone from the EPA into this plant, to survey and to assess the difficulties that they are having here and render assistance as needed.

And here's the point: The complications of this plant include such things as: high temperatures; low flows; unusual flooding, particularly early in our summer along our Missouri River, and the plant's seemingly extra sensitivity to these factors. Coupled with that are the factors of Omaha not requiring pretreatment and having a combined sewer system.

This particular plant is on a segmented construction program, and it was just last October that the secondary treatment process began to operate. The hydrogen-sulfide odorous gas which has been the primary problem associated with this particular plant, has been a very real and immediate problem. The problem has, I think, now gotten to the point where people are being awakened at night and they can't sleep.

And I've got some pictures here, Mr. Chairman, you might be interested in, of what happens to fresh paint on the sides of the houses in the neighborhood when the odor problem is at its worst—if anybody would like to come up and take a look at it. A fellow named Paul Hodobeck's home has just had these experiences.

So, I'm worried about the safety and the health of both the nearby residents as well as the plant employees, and I think they've now become significant issues. So, in my letter to the EPA Administrator, I raised the concern of whether we in the Federal program and Federal policy area may be looking at the problems of clean water and clean air too disjointedly. Oftentimes, clean water and clean air are not totally separate nor are they unrelated.

The treatment process of this plant, as with a majority of the others, have significant problems with hydrogen-sulfide odors. And perhaps it is time that we reassess the need for having some kind of air standards for treatment plants that are located in or near residential areas.

So, I do, indeed, appreciate the opportunity to sort of associate the problems of clean air and clean water, particularly as they relate to the treatment processes that are the subject, Mr. Chairman, of your oversight hearings. I will stick around a while. I have to do one other thing for about 10 minutes and I'll be back, and I hope for an opportunity to ask several questions to the distinguished panel of witnesses that you've assembled. Thank you very much.

Mr. **Breaux**. The committee is pleased to have you and encourage your participation in any way you would like.

I'd like to welcome our first panel this morning—Mr. Hugh Wessinger, who is Senior Associate Director for Resources, Community and Economic Development Division of the U.S. General Accounting Office here in Washington. He is accompanied by three of his colleagues.

Hugh, if you would go ahead and introduce them for the record, we'd be pleased to have your report.

TESTIMONY OF HUGH WESSINGER, SENIOR ASSOCIATE DIRECTOR, RESOURCES, COMMUNITY AND ECONOMIC DEVELOPMENT DIVISION, U.S. GENERAL ACCOUNTING OFFICE, WASHINGTON, DC, ACCOMPANIED BY SAM MADONIA, SENIOR GROUP DIRECTOR, RCED; ROBERT GORMAN, GAO EVALUATOR, DALLAS, TX; AND JIMMY BARNETT, GAO EVALUATOR, DALLAS, TX

Mr. **Wessinger**. Thank you very much, Mr. Chairman.

On my left is Mr. Sam Madonia, who is the Group Director in charge of our work at EPA. On my right is—my far right—is Jim Barnett, and on my immediate right is Bob Gorman, both of the Dallas Regional Office, which was responsible for most of the work that we're going to be talking about here today.

Mr. **Breaux**. All right. Before we begin, I have two unanimous consents to make two letters from the chairman of the subcommittee, Mr. Levitas, to Mr. Ruckelshaus and Mr. Bowsher, inviting them to participate in the hearings, to be made part of the record at this point.

[The letters of Mr. Levitas follow:]

Committee on Public Works and Transportation,
U.S. House of Representatives,
Washington, DC, September 12, 1984.

Hon. William D. Ruckelshaus,
Administrator, U.S. Environmental Protection Agency, Washington, DC.

Dear Mr. Ruckelshaus: The Subcommittee on Investigations and Oversight of the House Committee on Public Works and Transportation will hold a hearing on September 19, 1984. The purpose of this hearing is to review the progress that has been made by the EPA during the past six months to improve the performance of the National Pollutant Discharge Elimination System (NPDES) permit program authorized by the Clean Water Act.

As you recall, the Subcommittee held two days of hearings on this same subject earlier this year, on March 7 and 8. At that time, testimony by officials from the U.S. General Accounting Office, and your agency, indicated that the years-old problem of significant non-compliance with wastewater discharge permit requirements by thousands of industries and municipalities continued to persist. EPA officials also testified that a number of steps were being taken to improve the management of the NPDES permit program, and to correct for serious budget and staffing reductions that have occurred during the past few years. These reductions have seriously eroded the Agency's ability to effectively enforce the Clean Water Act's requirements.

My reason for writing is to request your assistance in arranging for Mr. Jack Ravan, EPA Assistant Administrator for Water, and Ms. Courtney Price, EPA Assistant Administrator for Enforcement and Compliance Monitoring to appear before the Subcommittee on September 19, 1984 so that they can assist the Subcommittee with this most important review.

The hearing is scheduled to begin at 9:30 a.m. in room 2167 of the Rayburn House Office Building, with testimony from the General Accounting Office. Mr. Ravan and Ms. Price will then be called on by the Subcommittee.

I understand that our respective staffs have already had a number of discussions concerning the details of this hearing and will coordinate the final arrangements with respect to the specific points to be addressed and for the subcommission of written testimony and other documentation.

I look forward to your cooperation and assistance in this matter. and to a thoughtful and candid discussion of the issues involved.

With best wishes, I am
Very truly yours,

ELLIOTT H. LEVITAS,
Chairman,
Subcommittee on Investigations and Oversight.

COMMITTEE ON PUBLIC WORKS AND TRANSPORTATION,
U.S. HOUSE OF REPRESENTATIVES,
Washington, DC., September 12, 1984.

Hon. CHARLES A. BOWSHER,
Comptroller General of the United States,
U.S. General Accounting Office, Washington, DC.

DEAR MR. BOWSHER: Earlier this year, on June 21st, I wrote to you to request your assistance in preparing for oversight hearings to be held this month on the U.S. Environmental Protection Agency's enforcement of the Clean Water Act. Specifically, I asked that you make a selective review of major industrial dischargers along the lower Mississippi River between Baton Rouge and New Orleans, Louisiana.

I understand that this review is now complete, and that the results indicate that there continue to be serious shortcomings in the policies and practices employed by the U.S. EPA for obtaining compliance by many of the study area's industries with the law's clean up requirements.

Given the significance of your findings, it would be most helpful to our review if you or your designated representatives would appear before the Subcommittee at its hearing on Wednesday, September 19, 1984, to present on overview of your study, and to discuss with us your findings and recommendations.

The hearing is scheduled to begin at 9:30 a.m. in room 2167 of the Rayburn House Office Building. I look forward to your assistance in this matter.

With best wishes, I am,

ELLIOTT H. LEVITAS,
Chairman,
Subcommittee on Investigations and Oversight.

Mr. BREAUX. They tell me we should swear you in, so if you'll go ahead and, please, stand and raise your right hand. Everyone is to participate.

[Witnesses sworn.]

Mr. BREAUX. Please be seated. We'll be pleased to receive your testimony.

Mr. WESSINGER. We're pleased to be here today to present the results of our most recent work on how well certain major industrial dischargers in Louisiana have been complying with National Pollutant Discharge Elimination System permits—the principal means of controlling the Nation's water pollution.

On December 2, 1983, we issued a report entitled "Wastewater Dischargers Are Not Complying with EPA Pollution Control Permits," which included an analysis of 50 major industrial dischargers in Louisiana. We testified on that report before your subcommittee in March of this year. In June, you asked us to follow up on information we had included in that report regarding industrial dischargers along the lower Mississippi River between Baton Rouge and New Orleans.

At your request, we have reviewed: One, the frequency, duration, and severity of permit violations that are continuing to occur in that area; and, two, the adequacy of Environmental Protection Agency actions to improve compliance with permit conditions.

Because 34 of the 50 dischargers we reported on earlier were located in the lower Mississippi River area, we selected, with your agreement, these 34 for our current analysis. Since one discharger did not have a permit with enforceable effluent limits, we did not include that discharger in our current analysis. The compliance date for the 33 dischargers we analyzed spans a 45-month period from October 1, 1980, to June 30, 1984. The data for the first 18-month period were obtained from our December 1983 report, and the data for the last 27-month period were obtained by our latest effort. EPA's Dallas regional office provided us the data, which were based on periodic compliance reports received from the dischargers.

Our current analysis was not directed at determining the causes for noncompliance, at identifying the impact of the noncompliance on water quality, or the effect that achieving compliance might have on individual dischargers in terms of their operations.

In summary, our update on permit compliance for the cases we reviewed in Louisiana showed:

One, permit noncompliance over a 45-month period was frequent and extensive;

Two, compliance reporting to top EPA management does not fully disclose the frequency and severity of noncompliance problems; and

Three, the EPA region's enforcement actions have little impact on abating noncompliance.

These findings are similar to the we have reported on over the past 6 years.

The Clean Water Act established the NPDES Permit Program in 1972, as the principal tool for controlling pollution entering our waterways from point sources such as factories and sewage treatment plants. The act requires that these facilities that discharge pollutants into the Nation's waters must have an approved NPDES permit. The permits specify discharge limitations for particular pollutants, actions and timeframes for complying with permit limits, and the dischargers' self-monitoring and reporting requirements. The permits must be renewed and updated at least every 5 years.

The permit program is managed by EPA, or a State, or a territory, which has been delegated program responsibility by EPA. As of August 31, 1984, EPA had delegated program responsibility to 36 of the 56 States and territories. Louisiana has not been delegated such responsibility.

Of the 65,000 permits issued as of January 1984, 49,000 were to industrial facilities and 16,000 to municipal facilities. EPA has classified about 8,000 permits as major, on the basis of discharge volume and the type of pollutants in the discharge. As of August 1984, 140 of 464 major industrial dischargers in the Dallas region were located in Louisiana.

Turning now to the results of our latest analysis. Noncompliance with the permit limits by dischargers located in the lower Mississippi River area is still a problem. According to EPA records, all of the 33 dischargers we analyzed exceeded their permits for at least 1 month during the 45-month period of our review. During this period, the number of dischargers violating their permits in any given month ranged from 7 to 22. Compared with our earlier analysis in Louisiana, noncompliance is getting worse. For example, all 33 dischargers exceeded their permits at least once during the most recent 27-month period. By contrast, 29 of the 33 dischargers exceeded their permits during the previous 18-month period.

In terms of noncompliance frequency, we found that the number of months the dischargers exceeded one or more of their permit limits ranged from 1 to 37 months. For example, 10 dischargers exceeded their permits from 1 to 10 months; 12 dischargers exceeded them from 11 to 20 months; 7 dischargers exceeded them from 21 to 30 months; and 4 dischargers exceeded them for over 31 months.

Although our analysis showed that most of the 33 dischargers were extensively and frequently exceeding their permits, all such violations are not being summarized and reported to EPA top management. Rather, EPA requires each region to prepare quarterly noncompliance reports which show only the number of dischargers in what EPA has defined as "significant noncompliance." EPA defines "significant noncompliance" as exceeding any monthly average permit limit by: one, more than 40 percent for conventional pollutants and 20 percent for toxic pollutants in any 2 months of a 6-month period; or two, any amount for 4 months in a 6-month period.

To illustrate how EPA's reporting on significant violators can understate continuing noncompliance problems, we prepared three charts in overlay fashion.

And I call attention to the charts that we have prepared.

[Charts shown.]

Mr. WESSINGER. As we previously mentioned, the information we used was provided by the EPA regional office on the basis of data received from the dischargers.

The first chart that you see shows the months the 33 dischargers appeared on EPA's quarterly noncompliance report. During these months, EPA determined that the dischargers were in significant noncompliance with their permit limits during the 45-month period.

While this data are important in identifying the significant violators, other information which EPA received from the dischargers is not being reported to the top EPA management. To identify dischargers at significant levels above permit limits but at levels less than reported to EPA management, we analyzed noncompliance for the 33 dischargers in terms of whether the dischargers exceeded at least 1 monthly average permit limit by 100 percent or more.

[Overlay shown.]

Mr. WESSINGER. As shown on our next overlay, 29 of the 33 dischargers met this criterion for at least 1 of the 45 months; 6 of the 29 dischargers exceeded at least 1 permit limit by 100 percent or more for 10 or more of the 45 months.

[Overlay shown.]

Mr. WESSINGER. The next overlay that we have shows the months in which any violation of any permit was reported to EPA. As you can see, there is a vast difference in the first chart, which shows significant violations according to EPA's definition, and the last chart which shows all instances of permit violations. This last chart provides a historical perspective on the frequency and persistence of noncompliance which EPA's reporting does not disclose.

Turning now to the enforcement of permits. Compliance with permit conditions is the primary goal of EPA and State NPDES enforcement efforts. EPA and the States have a number of tools available, both formal and informal. Informal measures include:

phone calls, warning letters, and meetings with dischargers. Formal actions include: administrative orders which demand compliance within a specified time period, consent orders by which the discharger agrees to comply by a certain date, and referrals to Federal or State prosecutors for appropriate civil or criminal proceedings.

Against this background of potential enforcement measures, we determined the extent to which the EPA region had taken informal and formal enforcement action against 10 of the 33 dischargers. We selected the 10 dischargers, generally, because they had exceeded their permit for at least 6 of the most recent 27-month period.

We noted that the EPA region used an informal enforcement approach such as phoning and writing warning letters to the 10 dischargers, rather than a formal approach. For example, over the last 27-month period, the region took 68 informal enforcement actions against the 10 dischargers, compared with 5 administrative orders issued to these dischargers. The effect of the informal enforcement, however, was very limited, as noncompliance continued afterwards. For example, the EPA region sent warning letters to and held meetings with one discharger which had been exceeding its permit for 9 months out of the 12-month period ending in December 1983. Despite these efforts, the discharger continued to exceed its permit for 5 of the next 6 months.

The EPA region took formal enforcement actions against 17 of the 33 dischargers by issuing 25 administrative orders and making one referral to Federal prosecutors. Sixteen dischargers never received any administrative orders during the 45-month period, although it appeared to us that such action was justified in a number of cases. For example, one discharger exceeded its permit for 21 consecutive months and for a total of 33 of the 45 months. In 9 of the 33 months, a permit limit was exceeded by 100 percent or more.

The effectiveness of the administrative orders in achieving permit compliance for the 17 dischargers was questionable, in that in all but one case the noncompliance continued in the months that followed. For example, one discharger had violated its permit for 35 consecutive months, from October 1980 to August 1983, after receiving a total of six administrative orders in 1976, 1977, 1980, 1982, and 1983.

According to EPA regional officials, their enforcement of permit limits has been hampered by scarce resources. The region covers five States and has issued 5,734 permits, including 876 permits to major dischargers. In fiscal year 1984, the technical engineering staff which performed compliance reviews and initiated formal and informal enforcement actions, totaled 19 staff; also, 10 administrative specialists took informal enforcement actions, such as issuing warning letters.

Each of the 15 engineers involved in enforcement efforts has a workload of 75 to 80 cases. One engineer has 102 cases. Turnover of the engineering staff has become a problem recently, as 4 of the 12 engineers who deal with major dischargers have less than 2 years experience. According to the section chiefs of both staffs, there is a staff shortage which does not allow the region to take enforcement action against as many dischargers as it would like.

This staffing situation caused the region to develop a screening criterion to determine which dischargers will receive a formal or informal enforcement action or no enforcement action at all. The EPA regional management designed this enforcement strategy based on limited resources that would only allow the compliance engineers to take formal enforcement action against about 20 percent of the major industrial dischargers in the region. The remaining 80 percent received either a phone call or a form letter for reported violations.

According to the EPA's regional general counsel, the screening criterion has no legal basis, because all permit violations are violations of the Clean Water Act. He told us that because of this criterion he believes the region has some dischargers which need formal enforcement action, because they chronically violate their permit limits but are screened out and only receive an informal action.

In our December 1983 report, we identified resource problems in six States regarding enforcement and other permit program activities. We recommended that the EPA Administrator determine to what degree limited resources contribute to continued high noncompliance and enforcement problems in the permit program and present this analysis to the Congress for its consideration in determining whether additional resources should be provided to improve the program's effectiveness.

EPA agreed with our recommendation, and in February 1984, informed us that its Office of Water would analyze information from the agency's management information system to determine the predominant causes of noncompliance. EPA further stated that if the analysis showed that limited resources were adversely affecting the effectiveness of NPDES compliance and enforcement activities, it would present the analysis to the Congress. This study is currently underway and will take several months to complete.

In addition to resources, EPA regional officials told us that the effectiveness of their enforcement efforts were affected by their lack of authority to assess fines for noncompliance. If EPA believes a discharger should be fined, the case must be referred to the Department of Justice for litigation. In our 1978 and 1983 reports, we recommended that EPA request the Congress to give it administrative penalty authority. EPA has requested such authority and the Water Quality Renewal Act of 1984, which passed the House in July 1984, contains a provision on administrative penalties.

In conclusion, let me caution that, because of the limited scope of our review, we cannot extend the noncompliance data beyond the dischargers we reviewed in Louisiana. However, our analysis surfaced a problem relating to EPA's reporting of noncompliance results. EPA's nationwide reporting of only those dischargers that are in significant noncompliance with permit conditions can give the impression, as we identified in our current analysis, that the noncompliance problem is not widespread. Our previous work has clearly shown that noncompliance—exceeding permit limit by any amount—is widespread and frequent for both major municipal and industrial dischargers. Our work in Louisiana has shown that some dischargers are exceeding permit limits over extended timeframes without meeting EPA's significance definition.

A more complete picture of permit noncompliance in the region would provide an important benefit. Since the region's level of resources can only provide a certain enforcement capability, this capability is generally directed to dischargers EPA identified to be in significant noncompliance. We believe that EPA's regional and headquarters management would be in a better position to direct the appropriate level of resources for enforcement if it had information regarding the full extent and severity of noncompliance in each region. Therefore, we would suggest that EPA expand its reporting to include a historical analysis of discharger noncompliance—as we have shown in the charts—as well as severity and frequency analyses.

Mr. Chairman, this concludes my prepared remarks. We will be pleased to respond to your questions.

Mr. LEVITAS [presiding]. Thank you, Mr. Wessinger.

And first of all, let me apologize for my late arrival. We are in the process of trying to save the Civil Aeronautics Board on the floor of the House. We are involved in that.

And I want to thank Mr. Breaux for starting the meeting. And I understand that he has presented my opening statement, which reflects my views as they now are.

First of all, Mr. Wessinger, is the nature of a permit that is issued by EPA different if it is issued to an industry in the private sector as opposed to a municipality? Is there any difference in the type of permit that is issued?

Mr. WESSINGER. I'm not aware of any. Each permit sets limits of what can be dumped into the river or stream. Now, I am not aware of any particular differences in them.

Mr. MADONIA. Each permit would set limits for concentration of the effluent and quantity of the effluent, and would set certain reporting requirements, testing requirements; but basically, the permits would be the same.

Mr. LEVITAS. Right.

My question is, that there is no difference in kind or in nature between municipal permits and those to private industry; they are different from discharger to discharger, based upon the nature of the effluent; is that correct?

Mr. MADONIA. That is correct.

Mr. WESSINGER. In other words, you're saying that there is no difference in the permit because of the nature of the effluent that's being dumped. No; I don't think so.

Mr. LEVITAS. The differences aren't with respect to whether it's a public entity, such as a municipality, or private entity; the differences between permits are based upon what's going to be discharged. Is that correct?

Mr. MADONIA. That's right.

Mr. WESSINGER. That is correct. That is my understanding.

Mr. LEVITAS. Also, it is my understanding that when we use the word major in reference not to violation but in reference to discharges, we are talking about volume of discharge as opposed to the strength or toxicity of the effluent; is that correct?

Mr. **Wessinger**. It is also as a basis—we point out—on the basis of the volume discharge and the type of pollutants that is being discharged.

Mr. **Gorman**. One of the factors in that situation, though, is what type of effluent is being discharged. It can be a relatively small discharger and still be classified as a major discharger.

Mr. **Levitas**. Based upon the nature of the effluenct?

Mr. **Gorman**. Yes.

Mr. **Levitas**. Based upon the toxicity of the effluent?

Mr. **Gorman**. As I understand it, that is correct.

Mr. **Levitas**. Now, this subcommittee and many others of Congress have always wanted to know how well a discharger performs over a period of time. And you made reference, in the conclusion of your remarks, to the need to get some historical reference when you are looking at performance. And EPA needs to do that. For example, if a discharger is in violation when you look at them, at a particular time, what happens later on, after you have done your review, is what we really want to know.

Now, in this instance, for these companies that you've looked at—at the 33—I take it you are now in a position to speak about their performance over a period of years. Is that correct?

Mr. **Wessinger**. Yes, sir. In other words, we can talk about a 45-month period for these dischargers here, and I think what you can see from this—the red chart—is, this is not what EPA defines as significant discharges, this includes all violations of whatever magnitude that is reported to EPA.

As you can see from the charts, there are times when they are in noncompliance—the violations are the red marks, but then there are times they come back into compliance, and then go back into noncompliance, they are in and out, frequently, over a 45-month period.

Mr. **Levitas**. Now, in the conduct of this review of these 33 companies in Louisiana, what was the source of the information upon which you based your analysis? In other words, what data did you review and where did you get the information?

Mr. **Wessinger**. These are the compliance reports that are submitted by the discharger to EPA. This is data that they report, and they are actually reporting that they are, in essence, in violation of their permit when they reported it to EPA.

Mr. **Levitas**. So, the information that you have graphically listed or graphically demonstrated in your chart is information that the dischargers, the companies, themselves, provide.

Mr. **Wessinger**. Right.

Mr. **Gorman**. They provide this on what is commonly referred to as the discharge monitoring reports [DMR's].

Mr. **Levitas**. Right.

I understand there is some question as to the accuracy in these limitations. But whatever its accuracy is, this information is generated by the dischargers, themselves?

Mr. **Wessinger**. This is what the dischargers told EPA they were doing.

Mr. **Levitas**. Let me just digress for a moment.

As I understand it, the penalty provisions in the law are twofold in nature: there is one penalty for certain violations of the permit, discharge violations or discharging without a permit, and there are separate penalties imposed for false reporting of information. Is that correct?

Mr. GORMAN. This is correct. Yes.

Mr. LEVITAS. Now, so the information that you've called to our attention was known—or at least available—to EPA officials.

Mr. WESSINGER. That is right.

Mr. LEVITAS. Now, that is sort of preliminary to, I think, everything we are going to be talking about today.

With respect to major discharges, the information which you report to us today suggests that many of these companies—and I mean major dischargers, now—even if they have installed the right technology, are not operating it properly. And that is similar to the experience we've seen in municipal treatment plants where there are operating and maintenance problems.

And my question is: Can you make any judgment based upon your study, here, as well as the other studies: Is this common?

Mr. WESSINGER. As we pointed out, we do not get into the causes of the problems in this latest effort. Now, we can go back to our December 1983 report, in which we did summarize some of the problems or the causes that were identified then.

Sam, do you have a few to mention?

Mr. MADONIA. The reasons for noncompliance include operation and maintenance problems, and overloading of the treatment plant capability. And these problems are prevalent in both municipal and industrial facilities although we did not look at the specific causes of noncompliance in the 33 industrial dischargers.

Mr. LEVITAS. But the pattern of noncompliance appears, to me—based on what you are saying—to be similar, both in the private sector and in the municipal discharges.

Mr. MADONIA. That is correct.

Mr. LEVITAS. Now, when we say "in violation," what we are talking about is violation of permit that the particular discharger has. And as was commented earlier, each permit specifies—lays out—what the limit should be and with respect to the discharge, with respect to the particular pollutants. And it is that violation that we are focusing on in these charts. Is that correct?

Mr. WESSINGER. That is correct.

Mr. LEVITAS. Now, how does EPA, or a State if they have delegated the authority, go about determining what the permits should be—what the permit limits should be? How do they decide what the permit limits should be for each of these dischargers?

Mr. WESSINGER. Now, that is one thing we have not gotten into, Mr. Chairman, is to how those limits are set. And I cannot comment on that.

Mr. MADONIA. We have not, in our prior reviews, looked at that process, Mr. Chairman. It's a process—a negotiation process—between EPA and the discharger, whether it be a municipal or industrial.

Mr. LEVITAS. So, they actually sit around a table and negotiate it?

Mr. MADONIA. Yes. There are some discussions and there are previous precedents as to what types of limits ought to be in the permits themselves.

Mr. LEVITAS. Are there supposed to be, or are there, in fact, some things known as national uniform effluent limitations?

Mr. MADONIA. That is correct.

Mr. LEVITAS. Are there such things?

Mr. MADONIA. National——

Mr. LEVITAS. Uniform effluent limitations.

Mr. MADONIA. Yes.

Mr. LEVITAS. I am told that many of these uniform standards which would give EPA and the municipalities and private industry some idea of standardization—what should or should not be—don't even exist today. Are you aware of that?

Mr. WESSINGER. No; I'm not.

Mr. LEVITAS. All right, now, once the limitations are in the permit, whether they are negotiated, or for regulations, or what, EPA or the State is supposed to enforce those limits; and once they've agreed upon them, somebody is supposed to enforce it. Is that right?

Mr. WESSINGER. That's right.

Mr. LEVITAS. Now, can EPA enforce, or State enforce, against any violation or is it only a certain type of violation—a big one—or what is the nature of that that would trigger enforcement?

Mr. WESSINGER. Under the Clean Water Act and permit they can enforce any violation that is identified.

Mr. LEVITAS. And I think you pointed out that at the present time they don't have administrative capabilities to enforce the administrative order, although it is contained in the House-passed bill.

Mr. GORMAN. That's administrative penalties. That's correct, they have——

Mr. LEVITAS. Now, they have to go to the Justice Department if they want to take any enforcement action.

Mr. WESSINGER. Or assess a fine or a penalty—I think they've got to go through the Justice Department.

Mr. LEVITAS. We'll get into that a little bit further, when we get to the EPA witnesses.

Well, it would seem to me, just looking at this information you've presented, whether you start with that first chart, or you go to the second one, or you come to this one—I thought you had them numbered, but they all do [laughter] that if this system were set up to stop discharges in violation of permits that were issued, and the enforcement stick is the way in which it ultimately is done, or any other thing short of the enforcement stick, I think one would have to conclude that it is not working.

Is that your judgment, based on what you've looked at?

Mr. WESSINGER. Well, it certainly is not working as anticipated, I would think when permits were set up. Obviously, I would think when permits were set up it was something that both parties felt was achievable. They are not meeting those permit limits, as we see in a lot of the cases; so, it's certainly not achieving what you had set out to achieve.

Mr. LEVITAS. What is that green line? I didn't understand. What is that green line?

Mr. WESSINGER. That's a firm that does not have an enforceable permit.

Mr. **Gorman**. They do have a permit that was issued in 1974. However, they requested an evidentiary hearing, which put the permit limits into suspension; they cannot be enforced against. So, from the period of 1974 to 1977, they did not have the limits. In 1977, another permit was issued; and they immediately challenged it. And again, it was put into the evidentiary hearing process. So, for this period there was no permit against which EPA Region 6 could enforce against, because of the evidentiary hearing process.

Mr. **Levitas**. As I understand it, Louisiana does not have delegated authority.

Mr. **Gorman**. That is correct.

Mr. **Levitas**. Would you have somebody turn those overlays back?

[Chart shown.]

Mr. **Levitas**. Now, at the bottom of part of the chart there, the one that is third from the bottom, Placid Refining Co., that—if I understand what your chart says—according to EPA's definition of what is a significant violation of the permit, that that would show significant noncompliance or violation on well over half—more than half—of the months in question.

Mr. **Gorman**. That is correct.

Mr. **Levitas**. Is that what that means?

Mr. **Gorman**. That is correct.

Mr. **Levitas**. So, the length of the black marks and the frequency of the black marks would indicate—the more of that on there, the more violations and extended period of time in violations.

Now, have administrative actions—have enforcement actions—been taken against——

Well, it's Placid and——

Mr. **Gorman**. Yes, Placid.

Mr. **Levitas** [continuing]. Formosa Plastics?

Mr. **Gorman**. Yes. There have been administrative actions or enforcement actions taken against Placid, and Formosa, also.

Mr. **Levitas**. Have those enforcement actions ever been followed by resumption of the permit violations?

Mr. **Gorman**. Yes. There have been administrative orders that were issued on Placid—a total of six, as we pointed out in the example in the testimony. Although we did not name it, one of the examples was Placid. Six administrative orders have been issued against that company, going back as far as 1977.

Mr. **Levitas**. Now, would you put the overlay on next?

[Overlay shown.]

Mr. **Levitas**. Now, these violations that are there are violations of the permit——

Mr. **Wessinger**. That exceeded their permit by 100 percent.

Mr. **Levitas**. 100 percent.

Mr. **Wessinger**. In other words, if their limit was set, for example, 20 on one item and they exceeded it by 40.

Mr. **Levitas**. All right, and now the last chart, please.

[Overlay shown.]

Mr. **Levitas**. This is one—all violations, any violations.

Mr. **Wessinger**. All violations, anything that was reported to EPA.

Mrs. **Johnson**. Mr. Chairman, I didn't hear that.

Mr. LEVITAS. Yes. Go ahead.

Mrs. JOHNSON. Would you just clarify your last statement? I didn't hear it.

Mr. WESSINGER. These red marks indicate any violation that the discharger reported to EPA.

Mrs. JOHNSON. These were actually reported?

Mr. WESSINGER. Right. These were reported to EPA.

Mr. LEVITAS. All of the information on this chart came from the discharger in a report to EPA. Nobody went beyond it. GAO did not go beyond what was actually reported by the dischargers.

Mr. WESSINGER. Any violation of the Clean Water Act, the act, itself, requires reporting not only in the DMR but immediately reporting to the regional office, indicating what the violation was and what they were going to do as far as preventing violation in the future.

Mr. LEVITAS. I have a number of questions for which these were just the basis, because I want to get into some real specifics and why. But at this point I would recognize the gentleman from Tennessee.

Mr. SUNDQUIST. Thank you, Mr. Chairman.

Obviously, you have a serious problem in terms of noncompliance in this portion of the lower Mississippi that extends from Baton Rouge to New Orleans. You may not have gone into as much detail in the rest of the region. Is this better or worse than the rest of the region or is it typical of what is occurring in the Dallas region?

Mr. WESSINGER. I think we got a statement from one of the Dallas region officials that this problem was not untypical of what is going on in the Dallas region. We did not do enough work in order to make that kind of a judgment.

Mr. SUNDQUIST. But somebody had to go into that region and say, "This is not untypical."

Now, on the chart, in the last column, do you see any trend, any hope for improvement?

Mr. WESSINGER. No. I cannot, over the past 4 or 5 months—in the last quarter. It's fairly consistent throughout that 45-month period. I don't see any real improvement.

Mr. GORMAN. We did go back and do an analysis just based upon the number of months in violation from time to time, and there are trends. It goes up and down, during certain times of the year; therefore, there is no particular pattern that we can see in relation to a timeframe.

Mr. SUNDQUIST. We're going to get into the permitting process in more detail. I would like to deal with some overall conclusions and then get into specifics.

Would it be fair to assume that those companies listed are pushing it not only to the limit but beyond the limit, assuming that that is acceptable to the regulating authority?

Mr. WESSINGER. You mean in how far they think they can go in violating their permit, is that what——

Mr. SUNDQUIST. That is right.

Mr. WESSINGER. That's an interesting question as to whether they are. I guess it's not unreasonable to assume that they probably know what the EPA considers to be significant noncompliance, and they can probably reason that if that is what they consider to be significant noncompliance, that they may have some leeway to get up to that point.

Now, I have to caution: That is purely speculation.

Mr. **Sundquist**. Well, that is my speculation based on what I see. It looks like there's a limit on what will pass muster and what will not or what would get the company in trouble with the Justice Department.

Do you think that will change any when EPA—if EPA—gets an opportunity to do some inquiring on its own?

Mr. **Wessinger**. I think it certainly will have an effect. You know, one of the type of administrative fines that they could have would depend a lot on how EPA implemented that and how stringently they implemented it, and how many times they fine people. If they went at it very forcefully and aggressively, I think it would have some impact; but I think only time will tell the effectiveness of that.

Mr. **Sundquist**. One last question, Mr. Chairman, and I'll pass on and come back later.

This is all based on self-compliance reporting.

Mr. **Wessinger**. Yes.

Mr. **Sundquist**. Has anyone done an audit to see if, in fact, the reporting is accurate or if it is understated?

Mr. **Gorman**. EPA has a program of compliance sampling inspections, where they, each year, do go out and send samples out, to the various laboratories, to see if the results they are getting are correct. Yes, they do have a program for determining the accuracy of the information that is here.

Mr. **Sundquist**. What do the results of that program indicate?

Mr. **Gorman**. I do not know at this point in time. I'm aware that that program exists, but we have not analyzed it to see how good it is.

Mr. **Sundquist**. Thank you, Mr. Chairman.

Mr. **Levitas**. Thank you.

Mr. Breaux.

Mr. **Breaux**. I thank the Chairman. I thank the representatives of GAO for their effort and their work.

We had a conference on the Resource Conservation and Recovery Act—the RCRA legislation. There are those who are attempting to make an argument that would say that because a company has an NPDES permit, that the last stage of a treatment process of a discharge of a liquid toxic, that that somehow should relieve them of any extra requirement on attention being placed at service impoundments that treat that material before it gets to the end, whether they have the NPDES permit to discharge into a lake or river. Your information seems to indicate pretty strongly that even those companies with the NPDES permits are not, in fact, in compliance for a great deal of the time.

Would you be very encouraged by that type of argument that says, "Because you have the NPDES permit, that somehow it should protect you and relieve you from any additional actions to be taken in the treatment process?"

Mr. **Wessinger**. It certainly wouldn't give me much encouragement, based upon the results we have of this 45-month period. If this is typical throughout the country—which I cannot say whether it is or not—I would certainly not be encouraged in the region that we looked at, in the 33 dischargers.

Mr. BREAUX. Besides what the gentleman from Tennessee asked you, whether this may be typical of not only Louisiana but of other States within region 6, do you have any information that would indicate whether, perhaps, it's also typical of the rest of the Nation?

Mr. WESSINGER. No; I cannot say. No.

Mr. BREAUX. You don't know either way?

Mr. WESSINGER. No.

Mr. BREAUX. Nothing like this has been done on any areas outside of region 6?

Mr. WESSINGER. Not on this—not this broad or which covered a 45-month period. In our report—in December 1983, we looked at an 18-month period, I believe.

Wasn't that right?

Mr. MADONIA. That is correct.

Mr. WESSINGER. And this is comparable to what we found for that 18-month period. This lines up quite well.

Mr. BREAUX. Do any of your studies indicate the reasons for noncompliance, being whether it was intentional noncompliance or someone just trying to sneak something through, or was it because of equipment breakdown, or because of special operating conditions that particular month that prohibited them, with the equipment they had, from meeting permit standards?

Mr. MADONIA. Our prior reports have identified numerous causes of problems: Operation and maintenance, inadequately trained operators, inadequate funds at the local level. However, we have not particularly looked at whether those types of violations were willful or whether it was just oversight; for example the problems of hiring operators. That type of problem, willfulness, is difficult to prove.

Mr. BREAUX. Was there any indication from your investigation that perhaps companies would call up EPA and say: "Hey, look, we've got a particular problem for the next 30 days with this particular piece of equipment. It is broken down," or "We're not going to be able to use it, and we're going to exceed our permit by 10 percent—or by 50 percent." And EPA says, "Well, you know, OK, if you've got to shut down the refining company, go ahead and do it, but report back in 30 days"?

Mr. GORMAN. We've had some indication of some communications between the discharger and EPA along those lines that——

Mr. BREAUX. What type of communication?

Mr. GORMAN. Communications in terms of saying that they were having some equipment problems and that they had temporary production problems that were going to create a problem for them.

Mr. BREAUX. Has EPA, in your opinion, been inflexible in those types of situations? Were they saying: "Well, OK, we know you're in violation. We're not going to take any action against you, because we know the situation"?

Mr. GORMAN. Actually, I couldn't make a judgment in that case. They would just acknowledge the receipt of the communication. And when something like that happens, and it's a one-time situation or a peculiar situation, there's not a lot that you can do.

Mr. **Breaux**. Not knowing of the penalty provisions, I take it there are no penalty provisions that would require EPA, if a company is knowingly in violation, to close the operations of the company, would it?

Mr. **Gorman**. I really can't speak in terms of an immediate closure. I am not aware of any where they could go out and close a plant immediately, on a one-time situation. I think there are penalties that if they go far enough into the entire process, they could conceivably close the plant down. It would be a very long legal process, including the Department of Justice, I believe.

Mr. **Breaux**. Is the frequency of instances that you are aware of, where companies would call up EPA and say: "Hey, we have this particular problem this month because of equipment breakdown, because of extra production, or for whatever reason," but the company would notify EPA that they were having the problem. Do you have any indication of frequency of that? Is it frequent——

Mr. **Gorman**. No.

Mr. **Breaux** [continuing]. Anything like that?

Mr. **Gorman**. I would say it would be a relatively infrequent situation, but beyond that I could not make a judgment.

Mr. **Breaux**. I was interested—and I've forgotten which gentleman indicated a concept of negotiated permits. I don't know anything in the law that allows negotiated permits. I understand that EPA had certain discharge standards—certain parts per million of a particular toxic that is allowed to be discharged into a certain volume of water—and those are pretty fast and hard numbers. We could all argue whether it's too high or too low. But did you indicate that there is some negotiation with the company?

Mr. **Madonia**. The permits are, as you indicate, based upon effluent limitation guidelines which serve as the basis. But there is some discussion in terms of testing requirements, how often testing should be done, how often reporting should be done. But you're correct, the effluent guidelines serve as the basis for the limitations on effluent, itself.

Mr. **Breaux**. Are there, in fact, permits that exist that allow for a greater discharge than the existing effluent standards for that?

Mr. **Gorman**. Let me try to clarify something here. As far as these industries are concerned, the effluent guidelines are established for the industry category.

Mr. **Breaux**. I understood that.

Mr. **Gorman**. Yes; that is correct, on industry by industry. Therefore, when you set out in a particular, given situation, then that has to be worked out. It is quite a complicated process, engineeringwise, et cetera. And the word negotiation was used. I think it's more a matter of the two arriving at what it should be, based upon the standards, this is really the point that we are making here.

Mr. **Breaux**. I just have one final point. You indicated that your study doesn't indicate whether these are intentional violations, or equipment breakdown, or—you don't know why these violations.

Mr. **Gorman**. That is correct. We do not know why.

Mr. **Breaux**. The study does not indicate that?

Mr. **Gorman**. No; our study was just to find out the degree of compliance.

Mr. BREAUX. Mr. Chairman, I think it indicates that we do have some problems in some of these areas and we need to do some things.

I would note, interestingly enough—I think this year I noticed in the paper—that New Orleans, which pulls all of its drinking water from the Mississippi River, was engaged somewhere in competition in Dallas, in a clean water drinking contest, with all of the major cities from around the States. The water from New Orleans was ranked as the clearest and the cleanest and the most drinkable. I'm not sure what they do to it to get it to that point, but it does indicate that we still have pretty good drinking water. Like I said, I'm not sure what they have to do to it.

Mr. LEVITAS. Thank you, Mr. Breaux.

I think what all of this shows—leaving aside anything else—is, the assumption is—and I guess people could challenge that, but if the assumption is that the way you get cleaner water is to put a permitting system and then to enforce the people who would violate that permitting system, that we're not doing this very well—or EPA is not doing it very well.

Now, it may be that we have picked the wrong way to go. It may be that it is overdesigned, so that even with these violations we are achieving a good quality of clean water. But if the theory is that you have a permit that is not to be violated, and if it is violated you enforce against it so you don't keep violating it, that is not working. That, I think, is pretty obvious.

Would you agree with that, Mr. Wessinger?

Mr. WESSINGER. Yes; I would.

Mr. BREAUX. Could I ask one more question, Mr. Chairman?

Mr. LEVITAS. Sure.

Mr. BREAUX. We do not have the EPA permitting process, obviously, to the State. Does the State have any jurisdiction or are they exercising any authority over any of the NPDES permittees?

Mr. GORMAN. Yes; they do. They have their own separate permitting process and enforcement practices.

Mr. BREAUX. How is that working; have you had any indication?

Mr. GORMAN. Very briefly, just to determine general information; but we have not really gone into it in depth.

I might add that—I believe it was on the *Placid* case—in the final analysis Louisiana fined Placid $625,000 as a result of their noncompliance. EPA was prepared to take them to the Department of Justice in the final efforts to get them back into compliance, and EPA and Louisiana agreed that Louisiana would proceed with the administrative penalty and fine them $625,000.

Mr. BREAUX. Thank you, Mr. Chairman.

Mr. LEVITAS. Thank you.

Mr. Molinari?

Mr. MOLINARI. No.

Mr. LEVITAS. Mrs. Johnson?

Mrs. JOHNSON. Yes; thank you.

How many dischargers in this area do not have a permit?

Mr. GORMAN. I cannot speak to that. We did not look at the number that were not on permit, we only selected from a group that were permitted.

Mrs. JOHNSON. But do you have any sense of how many?

Mr. Madonia. Well, in our prior report—our December 1983 report—we looked at whether or not there were a backlog of applications and whether there were industries that had applied. And there was a backlog.

As far as dischargers who were possibly discharging without a permit, we reported that none of the six States we looked at had any kind of formal program for identifying nonfilers. The regions we talked to indicated that they did not think that was a problem: They felt that all major dischargers had applied for permits.

Mrs. Johnson. That is very interesting. That is not what the businessmen in my State say, but we have a strong compliance program, I believe, and they see the difference showing up in the competitive bidding process.

I think it is interesting that you devoted no time to trying to determine what portion of the real world was participating in this permit program that we put in place. My belief is that it's probably a smaller portion in the federally administered areas than in the States administered areas. That is just prejudice, but it always seems to me that a strong State agency has better connections in the business community and, therefore, can locate potential permittees. Even small businesses feel more visible in a State community than they feel in a Federal community and it's much harder for the Federal Government to get information on these businesses.

Apparently, we have devoted no resources to finding out whether or not in States with a federally administered program there are a lot of nonparticipating discharges. Do you really have no information about that?

Mr. Wessinger. No.

Mrs. Johnson. OK. Have you done a similar study of any area in a State where the program is State administrated?

Mr. Wessinger. No; we have not.

Mrs. Johnson. What is your definition of noncompliance? I'm sorry, I wasn't here at the beginning, and I noticed that you mentioned EPA's definition of significance noncompliance. I assume that in your study you did not use the definition of significant noncompliance. You used, simply, the definition of noncompliance.

Mr. Wessinger. Well, we had three definitions. We have three charts up there, and one would be using EPA's definition, what they consider noncompliance, and we show the——

Mrs. Johnson. That's the first one.

Mr. Wessinger. That's the first one.

The next one, we just pretty much made an assumption. We wanted to take a different cut between all violators and versus EPA definition, and we just selected 100 percent—anything that was over 100 percent of their permit limits. We looked at that—that was our second chart—we tried to get something not necessarily in the middle, but it was just a different cut at noncompliance. So, we didn't really define noncompliance.

Mrs. Johnson. So, in the end you looked at any instance of noncompliance; you didn't differentiate between small, medium, and large.

Mr. Gorman. In terms of severity?

Mrs. Johnson. Yes.

Mr. GORMAN. Well, our final chart—this is anything in violation of a permit, anything over the permit, regardless.

Mrs. JOHNSON. So, it is difficult, with that kind of approach, to evaluate something that on the face of it sounds extraordinarily bad but upon closer examination may not be. In this case, 33 dischargers exceeded their permits at least 1 month during 45 months.

Now, that is almost 4 years. If you exceed your permit once in almost 4 years, and you exceed it in a minor way, frankly, we'll be very glad. I have many of these types of companies in my district and I know that it's very difficult to control discharges. As you say, you may have a new employee, you may have a new machine, or something may change in your source supply. There are all kinds of variables that can change a plant's waste stream.

Mr. GORMAN. I think, realistically, we would have to say that some parameters would have to be established as to what level of enforcement would be required; because obviously, we can't go down to the one violation in a 45-month period of time. That effort was simply to show what was going on out there over a period of time.

One of the problems that we have with the current reporting criteria is, it shows only a 6-month period of time. And very frequently you can get into compliance and, therefore, the 6 months does not show——

Mrs. JOHNSON. Did you analyze your data to see, how we might differently categorize noncompliance so that we might have a better definition? There might be certain kinds of noncompliance that we could define one way so that it would carry a certain warning so that we would know above it upon monitoring the reports. We do have these kinds of violations that are relatively minor and that happen relatively infrequently.

Mr. GORMAN. Mrs. Johnson, let me point out that the criteria that is used in reporting on the NPDES permits are reported on compliance reports which show exceedences at levels above the permit levels. That is a reporting criteria only; that has nothing whatsoever to do with the region's enforcement action. They have another system that they use in the screening process in the region to determine what enforcement actions will be taken.

So, what we're talking about is two different things. In one instance we're trying to establish a uniform reporting of policy in the regions and those States that have the designated program, so that when it comes to Washington everybody will be reporting on the same basis.

As far as enforcement actions to be taken in the region, that will vary depending upon the screening process and how it is implemented in the region.

Mrs. JOHNSON. That's a good point.

Certainly, though, the broader definition of noncompliance is inadequate. We're not developing the statistics that we need because we're using such a broad definition of noncompliance. We need some definitions underneath that reporting so that we can understand what's happening among lower level problems.

Mr. GORMAN. We do not have any conception as to what might be appropriate? It is a very difficult thing to do, to attempt to set what is and is not reportable. And it appears that about the only thing you can do is on a resource basis—you've got so many resources that you can use in the enforcement of the compliance area, and that way you try to use them the best way you can in terms of those that are in violation.

I think the point we were trying to get at, as far as laying this out, is to show that there is a wide range, and if you use that reporting criteria that is in existence you miss a lot. We're not suggesting that you should use this entire spectrum for reporting purposes, we're just saying there's a lot of difference between the two things that we are showing, and, therefore, you may want to consider something in between that, something, obviously, less than 1 month—avoid 1 month every 4 years, that practice.

Mrs. **JOHNSON**. Yes, that's true. I appreciate the point you're trying to make. But it seems to me that for us to make the decisions that we need to make, we need to know more about the nature of the cases that pose minor violations, or infrequent violations.

Mr. **GORMAN**. I would agree with your statement.

I agree with your statement. It's a very complex area to get the information that you are talking about; that is, the details in a given situation. It's extremely time-consuming and difficult to do; it takes a lot of resources to do it.

We worked on these 33 examples, or 33 cases, just with the information we have on them, certainly not the depth of information EPA has. In total, we worked on them for better than 2 months in order to get this. So, if we were trying to do this for every plant, get down to the nitty-gritty details, it would be extremely time-consuming, very resource-intensive work.

Mr. **LEVITAS**. Would you do this before you go forth, because it might be helpful to Mrs. Johnson to see the overlay immediately underneath this one.

Mr. **GORMAN**. The 100-percent violation?

Mr. **LEVITAS**. Yes; she was not here when you went through that.

This overlay, as I understand it, shows violations by permit limits of at least 100 percent. And that is the ones in blue; is that correct?

Mr. **WESSINGER**. That is correct.

Mrs. **JOHNSON**. So, you're basically talking 80 percent for conventional pollutants, 40 percent for toxic pollutants, are you not——

Mr. **GORMAN**. No.

Mrs. **JOHNSON** [continuing]. For 2 months?

Are you using the same percentage for 4 months?

Mr. **GORMAN**. No; I'm sorry, I'm not following what you're saying here.

Mr. **WESSINGER**. I think what you are reading there is the EPA criteria.

Mrs. **JOHNSON**. That's right.

Mr. **WESSINGER**. And that's our first chart, underneath there.

Mrs. **JOHNSON**. But I'm doubling it.

Mr. **WESSINGER**. Yes; and what we did, we didn't take up any number of months, we just at one point in time said they had violated their permit by 100 percent.

Mrs. **Johnson**. So what you are saying is that the second chart means that they are meeting EPA's definition of significant noncompliance.

Mr. **Gorman**. If it is over 100 percent for 2 months, then it would automatically meet their requirement.

Mrs. **Johnson**. EPA's definition of noncompliance.

Mr. **Gorman**. But it could be—there are some in there between the 40 percent and the 100 percent which would leave the black mark showing through, that would be over their 40 percent noncompliance but would not meet their 100 percent. There would be a range in there of 40 to 100 percent. It would not meet our 100 percent criteria but would still be on their noncompliance report, I think.

Mrs. **Johnson**. You see, this chart is showing double EPA standards, a 100-percent increase.

Mr. **Gorman**. Yes; if the permit indicates for a particular effluent that they are allowed to discharge 10 pounds into a stream, what we have said here, they are actually discharging 20 pounds into the stream.

Mrs. **Johnson**. OK. I separated that from the definition. I thought it has to do with 100 percent of the allowed or the significant noncompliance definition.

Mr. **Gorman**. It is confusing.

Mrs. **Johnson**. OK. Thank you.

Mr. **Levitas**. Mr. Molinari?

Mr. **Molinari**. Yes, Mr. Chairman, I do have a question that I would like to ask of the panel. I wonder if we could have handed out a document that was provided to us, I believe by EPA; and it is entitled "Preliminary Water Enforcement Actions for the Fourth Quarter of Fiscal Year 1984." Do we have copies available that we can furnish to the panel? Maybe EPA has extra copies with them. [Pause.]

Fine. Now, our preliminary examination of that report would seem to indicate that we compare region 6 as opposed to the other regions, you get the impression from reading this graph that region 6 has been extremely aggressive in pursuing violators. For example, under the first category, "Total Actions," we show 68 actions in the last quarter and the total of 288 in the fiscal year. That compares to a total of 142 for the entire 10 regions. The next closest, in terms of the last quarter, would be 21 or a third of what they have done in that region

Now, perhaps the ones that we might consider most significant is in the next column, "Municipal Majors." There the figures were even more dramatic. We are told that there have been 50 administrative orders that have been issued in the case of municipalities that are listed as major in the last quarter, and that is 50 out of 68 in the country. The total in that region for the fiscal year is 202, and that is out of a total of 567 for the entire 10 regions.

Then, if you get to the next column, "Municipal Minors," you have 6 in this quarter, a total of 28. And that 6 compares to 9 for the entire country.

So, looking at this report and its statistics, one would imagine a rather aggressive performance by region 6.

Mr. GORMAN. I think region 6 has put a great deal of emphasis on enforcement in the last year. We have not looked at the fourth quarter. This is the first time we've seen this particular document.

Mr. MOLINARI. If you look at the figures, you're going to see that the fourth quarter has not changed. The fourth quarter is about one-fourth of what the fiscal year is, so I don't think you are seeing any real big change in the fourth quarter; it's running the norm.

Mr. GORMAN. The only other observation I would add to that is that we were looking strictly at the industrial majors, we did not look at municipal. So, as you can see, their effort is aimed at that particular activity.

Mr. MOLINARI. Let's look at nonmunicipal majors, then, in the next column. And, there again, region 6, we see 10 administrative orders as opposed to 21 for the entire 10 regions, and a total of 42 in the fiscal year; again, roughly one-fourth. So, they're running the norm, as opposed to 22, as opposed to 113 for the 10 regions. I don't see how that squares with the testimony that you have given. Correct me as to where I am wrong.

Mr. GORMAN. Well, there is no doubt that, from these figures, they are taking a pretty aggressive action in terms of the administrative orders as compared to other regions. However, I am in no position to make any judgments as to how many they could or should have issued during that period of time. So, in relation to other regions, they are issuing a lot of AO's, I would have to admit that. That is all I can say.

Mr. LEVITAS. If the gentleman would yield.

Mr. MOLINARI. I'd be glad to.

Mr. LEVITAS. Let me just get a couple of things out to make sure, because I don't understand.

Does this indicate State actions where there has been delegated authority in each of the regions?

Mr. GORMAN. I cannot respond to that question, sir.

Mr. LEVITAS. I understand there are no delegated authorities in region 6 at all, so any enforcement that would have to be done would have to be done by EPA.

Mr. GORMAN. That is correct.

Mr. LEVITAS. In region 4, with which I am more familiar, I know a number of States have delegated authority, and, therefore, EPA would not be bringing these types of actions, for the most part.

Mr. GORMAN. Administrative orders.

Mr. LEVITAS. And it could be that because region 6 has gotten no delegated authority to the States, that may increase the number of actions; in addition to the fact that they have, apparently, been rather aggressive——

Mr. GORMAN. They have.

Mr. LEVITAS [continuing]. And hard-nosed about it.

But I wanted to make the point that I don't think there's any State action——

Mr. GORMAN. There would be no State action in region 6.

Mr. MOLINARI. Mr. Wessinger?

Mr. WESSINGER. The point I think I don't want to lose sight of is that when we did this we were not criticizing EPA for what they are doing, only trying to point out that there is still a lot of noncompliance out there. And that's really what we went in to find.

Mr. MOLINARI. OK. But our mission is to determine whether EPA is doing their job. We are asking you to assist us in our responsibility in determining, at least on a regional basis, whether they are or are not doing the job.

I had occasion to review your December 1983 report and there is no question that it was a rather scathing indictment of EPA, at least up to that period of time. What I'm trying to find out now is, are things changing? Are things changing for the better? Does this indicate, at least in region 6, that things are proceeding well?

Perhaps, what we might want to do in the future is ask you to pick one of those that are very low on the scale and take a look at that region to see if, by comparison, they're not doing as well.

Mr. GORMAN. What we would also want to compare, I think, in previous years as far as region 6 is concerned, to see that we have a perspective there, 1 year to the other, rather than just looking at this 1 year.

Mr. MOLINARI. But don't you have that information?

Mr. GORMAN. I'm sorry?

Mr. MOLINARI. Would you have that information, based on the report that you did originally?

Mr. WESSINGER. Not on the number of administrative orders.

Mr. GORMAN. We don't have them by years, so that we could compare them. We talked about the numbers of AO's, and we talked about the results of the AO's, but we do not have it analyzed and situated as to——

Mr. MOLINARI. With the chairman's approval I would like to request that you make an analysis of the prior years as opposed to this latest fiscal year and furnish a copy to the subcommittee.

Mr. LEVITAS. That would be helpful. I would like for you to do that.

[Information received from Mr. Gorman follows:]

NUMBER OF ADMINISTRATIVE ORDERS ISSUED BY EPA REGION VI

Fiscal year	Municipals	Nonmunicipals	Total
1981	95	91	186
1982	45	44	89
1983	218	61	279
1984	290	60	350

Note.—As of Sept. 13, 1984.

Mr. LEVITAS. And I would also like to find out how many of these administrative orders ever resulted in judicial enforcement; because the administrative order, on its own, is nothing more than wagging a finger at somebody. We haven't rapped them across the knuckles yet.

Mr. WESSINGER. We can furnish that for the record.

[Information received from Mr. Wessinger follows:]

NUMBER OF CASES REFERRED BY EPA REGION VI TO EPA HEADQUARTERS

	Mun	Non	Total
1981	0	4	4
1982	5	5	10
1983	6	3	9
1984	10	8	18
			41

(as of 9/21/84)

NUMBER OF CASES REFERRED BY EPA HEADQUARTERS TO DOJ[1]

1981	4
1982	9
1983	9
1984	10[2]
	32

[1] the referral to DOJ may have taken place after the fiscal year in which they were referred to EPA headquarters.

[2] the other 8 referrals were made by the regional office on 9/21/84.

Mr. MOLINARI. That was going to be my next question. Has GAO tracked these administrative orders if EPA is monitoring and following up as they are supposed to?

Mr. GORMAN. I think the best comment that we could make here is that we have recorded where there were administrative orders issued, and we can demonstrate very clearly that violations continued after the administrative orders were issued.

Mr. MOLINARI. And they are not following up by turning them over for action by Justice or anybody else?

Mr. GORMAN. We had one referral to Justice of this group.

Mr. MOLINARI. So it is your conclusion, then, that the administrative order is kind of a paper slap on the wrist and nothing further takes place, other than the issuance of the administrative order? This is rather important to what we are discussing here today. We've discussed this in the past. The administrative order is issued, and, theoretically, it takes the municipal discharger or industrial discharger, out of noncompliance at least temporarily.

Mr. GORMAN. It does.

Mr. MOLINARI. But is it your impression that, in that region, that is simply as far as they would go and they were not following up very vigorously?

Mr. GORMAN. I would only say that they have not referred very many cases to the federal courts.

Mr. MOLINARI. What is your understanding as to what transpires after the administrative order is initially issued?

Mr. GORMAN. Initially? They would, again, begin to watch the discharger through their normal monitoring process, that is their DMR's coming in. And the engineers who would have those cases assigned to them, then, would be particularly aware of the case, as to what's going on. They would be monitoring in terms of what is occurring. That's a continual process.

Mr. MOLINARI. But isn't there a time limit in AO?

Mr. GORMAN. I'm not that familiar with the AO, to be quite frank with you.

Mr. MOLINARI. I guess we'll have to refer those questions to EPA.

Mr. LEVITAS. To EPA. But I think it might be helpful at this point—because Mr. Molinari is absolutely on target when he says that the ultimate enforcement in getting something done really underlines whether anything is being done. And I am going to get into this later on. But I will share with my colleague an internal memorandum at EPA earlier this year, talking about the Clean Water Act referrals to the Department of Justice. And I'll just excerpt part of it that makes the point. They are talking about all of the references to the Department of Justice for action. They say:

> All of this effort has been to little avail. To date, seven of the cases still reside with the Department of Justice in Washington. Four were recently filed. It is my strong feeling that such inactivity by the Department of Justice on these water cases severely undercuts the enforcement credibility of our agency. The agency continually stresses the need for civil referrals as an appropriate remedy in the Clean Water Act. This is especially important when it comes to implementing the national water policy.

Skipping down a little bit, he says:

> We essentially are reduced to being paper tigers with our inability to deliver on civil litigation. Therefore, our credibility in terms of suggesting the states escalate matters from administrative actions to judicial actions in the case of severe recalcitrance suffers from lack of demonstrable success on our part in following that path.

I could go on, but I think that makes the point.

And let me say one other thing that was implicit in Mr. Sundquist's question earlier, before you got here, about do the dischargers push their noncompliance to the limit of the permit. In fact, they go beyond that, they push it to the limit of anticipated enforcement action; not just the limit of the permit, but to the point at which somebody is going to get so upset they're going to do something.

And I can tell you, as a one-time practicing attorney, that isn't just accidental; agencies have profiles, and they know the litigators and the counsel for corporations, and know what agencies are going to push, where they're going to push, and when they're going to push, and which are not. And they plan their advice to their clients, and their clients act in a way that reflects the profile and activity of these agencies. And what we are hearing in that internal memorandum is, what EPA knows is exactly what the dischargers know. And that is when they're going to do something, at that point; not at the permit point, but at that anticipation of when something is going to be done.

I mean, when you hear things like that, you know we've got some real serious problems. And I think we're going to have to get into that at some point in time with Mr. Ravan and with Ms. Price.

I'm sorry.

Mr. MOLINARI. I had terminated my questioning, Mr. Chairman. I think we will have to reserve the rest of them for EPA to answer. I think that would be more appropriate.

Mr. LEVITAS. Mr. Wise?

Mr. WISE. No questions.

Mr. LEVITAS. Mr. Daub, we're happy to have you with us here today.

Mr. DAUB. Thank you, Mr. Chairman. I already have had the privilege of talking about my particular problem, and I only have two or three limited questions. They are not nearly as interesting, I must say, as the last set of points that were being made by my two distinguished leaders in this committee. I'm concerned about those things, as well and I enjoy thoroughly the opportunity to be here.

You recall my concern with my city of Omaha. We're an old packing-house town and we have a single source system. We have a major primary treatment activity that starts with what comes from regular sewage, plus the industrial discharges, through one sewer line to the primary treatment facility. Then, in the same installation, we move that on through to a secondary treatment facility. In the process we are complying, if you'll recall, by and large, with the Clean Water Act, in waste discharge in parts per million which ends up in the Missouri River. But in the process we have a hydrogen-sulfide deoxygenation problem in secondary treatment.

Now, are you running into any of that? In any of your auditing, have you run into any similar problem where the clean air problem is either exacerbated or, in fact, amplified by the efforts that are being made on the clean water side of enforcement? Do you recall?

Mr. WESSINGER. I have no recollection of any.

Sam, you have more experience in this area.

Mr. MADONIA. We're not familiar with that particular plant, since none of our recent studies have included Nebraska. However, over the course of our studies, it sounds as if that type of problem is not uncommon. Those types of operational problems do exist at various communities, odor problems particularly.

As I recall, in our December 1983 report—I don't know of any instances where that particular problem showed up; but it is a difficult problem, and certainly the cause of the problem needs to be identified. And frequently, communities don't have the expertise and the know how to diagnose the problem, and they may need help and assistance from the State or EPA. But I think it is fair to say that those types of problems do exist elsewhere.

Mr. DAUB. So you don't have, then, any data in GAO that would indicate not so much typical or atypical circumstances but, indeed, you don't even know if there have been any intentional violations?

Mr. MADONIA. That's correct.

Mr. DAUB. Then I won't pursue that part of my inquiry.

Do you know if there is any kind of a network developing through which engineering and design technology can be shared with plant managers on this or the related problem of water and air? Are you familiar with any?

Mr. MADONIA. Not that we are aware of. EPA has increased its efforts to provide technical assistance to communities in diagnosing operational problems. What kind of networking exists to identify these odor-related problems we are just simply not aware of.

Mr. DAUB. Mr. Chairman, I have no other questions. I think they really ought to be reserved for the EPA.

I appreciate your testimony.

Mr. LEVITAS. Thank you very much.

If there are no further questions of this panel, and subject to those requests for submission of information, I want to express my appreciation to you for your testimony. And I am sure that this isn't the last time we're going to be talking about this subject, and look forward to working with you in the future. Thank you very much.

Our next witnesses are a panel of witnesses from the Environmental Protection Agency. We're going to hear from Mr. Jack Ravan, Assistant Administrator for Water, U.S. Environmental Protection Agency, and Ms. Courtney Price, Assistant Administrator for Enforcement and Compliance Monitoring. They will be accompanied today by: Ms. Rebecca Hanmer, Director of the Office of Water Enforcement and Permits; Mr. Richard Mays, Senior Enforcement Counsel; and Mr. Glenn Unterberger, Associate Enforcement Counsel for Water.

Ladies and gentlemen, we welcome you to the witness table. If you would, come forward and raise your right hand.

[Witnesses sworn.]

Mr. LEVITAS. As I indicated earlier this year, at the conclusion of our hearings on this subject, it was my intention to get back to the matter before the end of the year, to see what, if any, progress had been made and to see just exactly where we were. Mr. Ravan gave fine testimony before the committee. He made a number of commitments and representations. And we felt that it was only appropriate to give Mr. Ravan adequate opportunity, since he has been new to the job, to get his hands on the helm. And if we'd had a few more months I might have put this off for a few months. I feel, with the Congress coming to a close, hopefully, very shortly, that we needed to have some response at this time; and, therefore, these hearings were scheduled.

So, with that, let me start with you, Mr. Ravan. And we welcome you back to the subcommittee and look forward to your testimony.

TESTIMONY OF JACK RAVAN, ASSISTANT ADMINISTRATOR FOR WATER, U.S. ENVIRONMENTAL PROTECTION AGENCY, WASHINGTON, DC, AND COURTNEY PRICE, ASSISTANT ADMINISTRATOR FOR ENFORCEMENT AND COMPLIANCE MONITORING, ACCOMPANIED BY REBECCA HANMER, DIRECTOR, OFFICE OF WATER ENFORCEMENT AND PERMITS; RICHARD MAYS, SENIOR ENFORCEMENT COUNSEL; AND GLENN UNTERBERGER, ASSOCIATE ENFORCEMENT COUNSEL FOR WATER (ACTING)

Mr. RAVAN. Thank you, Mr. Chairman, Mr. Molinari, and members of this distinguished panel. Let me say, Mr. Chairman and others, right up front, that I believe this committee, this subcommittee in its oversight, very candidly, very honestly, serves a distinct and useful purpose for the Environmental Protection Agency and especially in the Office of Water. Before we get into the points of agreement and or, perhaps, disagreement, I want you to know, not necessarily as an olive branch but as a candid, honest fact, that your oversight, your inquiry, your impetus, if I may, your thrust into this area, helps to keep us sharp, helps to keep us on our toes, helps us to set priorities within the agency with regard to the given resources. That is very, very helpful. And regardless of whether or not we agree on every point, I want to thank you for that; because, quite honestly, it makes my job just a little bit easier to know that there are people like yourselves, on this subcommittee, who are very interested.

Mr. **Levitas**. Thank you very much, Mr. Ravan. I appreciate your saying that, and I know that the rest of the members of the committee do, as well. In most instances oversight properly conducted should operate in that fashion. Sometimes it doesn't; sometimes, frequently, I think it does. There are some issues and some occasions when, by nature of the particular controversy, it tends to be more adversarial, but that should not be the case in most instances.

It is hard to get people, sometimes—I've been doing this for a few years, now—but it's hard to get people, sometimes, in agencies, to look upon oversight as having any benign purpose. It is usually viewed as, at best, a pain in the neck, and at worst, an outright, direct threat and challenge, with the hordes of the Mongols charging across the steppes, waiting to ravage the poor, innocent people in the agencies, unmercifully and unjustly. But I can assure you that, certainly in these series of inquiries, while we may not agree—and I suggest we probably won't in everything—that our purpose is really one of constructiveness. I think that by pointing out some of these things we, perhaps—maybe I'm letting out a secret—perhaps we help program managers go to their superiors within the agencies, and budget-setters, and priority-setters, and say, "There is a very loud, squeaky wheel here that needs some oil." And it may, on occasions, even enforce the positions. I am not saying that it is true in this instance, but it may, in some instances, reinforce the position of program managers within an agency to achieve what they really wanted to achieve to begin with, because there are some other folks around who are saying what those people might have been saying in the inner councils.

So, I just say it is constructive. I think by doing what we do—and certainly that's true in this hearing—we're trying to achieve a common purpose and a common goal of how can we make these programs work more effectively and more efficiently, more economically.

Mr. **Molinari**. Mr. Chairman.

Mr. **Levitas**. Yes.

Mr. **Molinari**. Mr. Ravan, I appreciate the remarks that you made. I can't resist the temptation to ask you which, if any, priorities have changed as a result of our oversight process?

Mr. **Ravan**. I think, Mr. Molinari, the latter portion of the Chairman's remarks are more directly applicable; that is, to reinforce, underline, emphasize. If your views and the views of the Administrators or mine were different—substantially different—then I think I could have a very direct answer to your question. But what you have done is help us to do just that, to request and justify, if I may, the resources necessary in this area—the reemphasis, the credibility of the enforcement mode of the Agency at this point in time, especially since Bill has come back. And thirdly, my opportunity as a national program manager being held responsible in this area, to go to Regional Administrators and others within the Agency and say: "This must be done." There simply is no question about it. And, as a matter of fact, I'll introduce some of the folks who are here with me today to emphasize that point.

And I do have with me, Mr. Chairman, at your request, the panel: Ms. Price, who is our Assistant Administrator for Enforcement; Mr. Unterberger and Mr. Mays, who are her assistants, and Rebecca Hanmer, who came with me before and who is here to assist me today. She is, in fact, the Office Director for the program in my area. And there are one or two others here in the audience who can be of substantial help to myself and the panel as we get into, perhaps, some of the numbers and finer detail, which, quite honestly, I cannot always remember to the detail and accuracy that I would like to present to you. And notably among those is Dick Whittington, Regional Administrator from Dallas in region 6, and other Water Division directors.

But without further taking up your time, let me get right into the subject of today's hearing. Mr. Chairman, I'll summarize my remarks, if I may, but I'd like to have my full statement made a permanent part of the record. Ms. Price will also summarize, and we will submit our full statements for the record.

I have introduced to you, already, some of the people I'd like for you to know, and, perhaps, can help throughout this examination today. I will, again, thank the panel for giving me this opportunity; because, quite honestly, I've looked forward to it, to getting what I call "the 6-month checkup." As some of you may know, I just went through some medical checkups, and I think the two are relevant—which I'll make reference to later in my remarks. [Laughter.]

Thank you, ladies and gentlemen.

But we have, Mr. Chairman and others, I think, done a good job over the past 6 months to strengthen the whole NPDES program. Let me get to some of the detail.

Rather than focusing on the numbers at this point in time, what I do want to convey to you is that, at this point in time, I believe that there is a basic integrity to the NPDES permitting system. It consists of several elements, monitoring and enforcement being principal among them.

On the bright side, let me report to you that we have, this morning, 35 States and one territory, for a total of 36, who do have an approved NPDES program in place. During the annual regional reviews, which myself and the staff conducted during the spring and summer, we found that the permit issuance rate for the 10 regions and approved States, those I just mentioned, is well ahead of the 1983 rate. It is very encouraging.

We were gratified to find that the quality of the EPA issued industrial permits was, indeed, very high, as indicated by the results of our special study in this area.

We're making progress in getting the regions and the States on to our new national automated data system, the so-called PCS system. One of the interesting results of returning to EPA after a 7-year absence is to find that in some cases we are still in what I would call "horse-and-buggy days" and have not taken full advantage of technology, communications, accounting systems, computer systems, and the like, which are, indeed, available to us. We have, at latest count, all the 10 regions and 10 States in that PCS system.

Finally, I am pleased to report that the level of activity in the regions, in terms of formal administrative enforcement activities, is significantly ahead of last year's level.

There are some remaining concerns. Many have to do with the need for more consistent application of national requirements in regions and in States. First, although it appears that most of the EPA regions will meet or be close to meeting the fiscal year 1985 goal of substantially eliminating the major permit backlog, many of the States, the 35 or 36 I pointed out, will experience great difficulty in eliminating the backlog.

In terms of compliance monitoring and enforcement, we found that in the absence of specific milestones for action, some regions and some States may tend to negotiate too long with the permittee before initiating enforcement action. This can lead to unnecessary delays between the time the violation is discovered and the time enforcement action is initiated.

Another enforcement problem has been the absence of a consistent definition of "significant noncompliance" for regions and States to use in compiling their quarterly noncompliance report. I want to return to that in just a moment. We also need greater consistency with respect to the length of time that elapses before a region or a State takes a formal enforcement action.

Finally, while the numbers of EPA-issued administrative orders have improved and the majority were appropriately written and completed, some of these AO's did not, in fact, contain expeditious, fixed compliance dates.

To insure that progress will continue and to correct these deficiencies, EPA—the Administrator, myself, Ms. Price, and the entire staff—are going to take the following steps.

After months of work we have developed a significant new piece of guidance called "The National Guidance for Oversight of the NPDES Program." The new guidance represents the first time that we have anticipated national ground rules for regional and State compliance monitoring, and enforcement behavior. We have linked this new guidance with the formal, written, Federal-State enforcement agreements for fiscal year 1985, beginning in just a few days.

Among other things, these agreements will formalize the timeframe within which we expect regions and States to initiate formal enforcement actions. It is now understood by all parties that, if States delay, those even designated NPDES States, the Federal side, the EPA will take the formal actions in that State. The guidance and agreements are being tracked in the agency's new accountability system.

We've taken steps to improve the definition of "significant noncompliance." I would like for Ms. Hanmer, when we get there, to spend some time on this, because I have found, over the past 11—10—months, that the lack of definitions regarding what is the speed limit contributes significantly to the kinds of reports that the GAO just reported to you and to a lack of understanding between ourselves and the States. And I want to spend some time on that.

Mr. Levitas. Is Ms. Hanmer going to do that now, or do you want——

Mr. Ravan. A little later.

Mr. Levitas. OK. Also, I would like for you—and that might be a time to do it—I don't know if you heard my comments to the GAO witnesses in response to something that Mr. Molinari said, but the point at which something really bad, intentionally tough, might happen, is where industry and their advisers begin to react. And your agency has a certain perception, and I don't know what that level is. But that is the real world of action point, not the permit point. So, if either Ms. Price or Ms. Hanmer would address that at some point. I think it would be helpful.

Mr. RAVAN. Yes, sir, we will.

Having put that definition of "significant noncompliance" in the Federal Register on July 23, we are, at the request of some persons, entities, and this committee—subcommittee—closing that comment period on September 21, just 2 days from now and compiling the record, some of which I have before me and ready for you, today.

We'll be working on a fresh, new edition of the "National Enforcement Management System." Keep in mind, Mr. Chairman, that this EMS, so-called Enforcement Management System, was put in place in 1977, and there are some gaps there that we are going to close with the publication of the new EMS.

High on my list of priority activities for fiscal year 1985 is a new penalty policy for the NPDES enforcement program, and possibly new guidance for conducting inspections. While we have instituted these changes and anticipate others to better define the Federal Government's proper role after State-program approval, and to improve the pace, consistency, and effectiveness now is not the time to let up. I see my major task as one of continuing to manage and oversee this performance, not only of regions but the delegated States and the 15 or so States in which that we have direct responsibility. And I can assure you, this morning, that Mr. Ruckelshaus, Ms. Price, and others, and I totally agree on this point.

In the end, and as this subcommittee must assess, both EPA and the States have to be able to say with credibility to you and the others that the approved State programs are as strong as, or stronger, perhaps, than the EPA enforcement program. No other posture seems viable at a point in time when the numbers of delegated States will show that the States are now two-thirds partner while we are a one-third partner. And that situation is a plus in terms of your intent, I think, under the law. At the same time, it points up some of our present day difficulties.

Mr. Chairman, I'll hold now, if I may, and let Ms. Price summarize.

Mr. LEVITAS. Ms. Price.

Ms. PRICE. Good morning, Mr. Chairman. I, too, am pleased to be here.

Let me tell you who is with me—they've been introduced, but let me tell you what they do. To my right is Glenn Unterberger, who is the Acting Associate Enforcement Counsel for Water, and my Senior Enforcement Counsel, Richard Mays. With the committee's permission, I will ask them to assist me as the occasion arises in responding to any of yours or the committee's questions.

I will just submit my written statement for the record. Instead of reading it I would like to summarize for you, just highlight a few of the points that are made in it.

I was recently asked, as a matter of fact in terms of preparing for this hearing, that as to EPA and, specifically, as it relates to my office of Enforcement and Compliance Monitoring:

> Are there any differences between how we're going about the business of enforcing now and the way it was done when I came to EPA 18 months ago? And if so, are there any positive results flowing from those differences?

I think the answer—and I believe we'll be able to demonstrate that today in testimony—is definitely yes; there are differences, and the differences are having positive results.

What are those results? To begin with I think that we've definitely communicated, both within and outside EPA, that the agency does have the will to enforce. Nowhere was this more forcefully articulated than last January at the National Enforcement Conference, when both the Administrator, and the Deputy Administrator, and I, confirmed, reaffirmed, the fact of that will to enforce.

The differences in how we're going about enforcement and the positive results that I believe flow therefrom, all are the result of, I believe, communicating, or begin with communicating, that will. Let me give you some specific examples of what I believe are the very positive results.

One of the areas to which the Congress frequently looks is the level of enforcement activity as measured by the number of judicial referrals that are sent from the regions to headquarters, or directly to DOJ. And in this regard the progress has been, I think, substantial and dramatic. In terms of water referrals in fiscal year 1981, there were 33. As of September 14 of this year, we had 70 Clean Water Act referrals, either from the region to headquarters or directly to the Department of Justice.

I think another example of positive enforcement change is our reduction of the time it takes to get a judicial referral from EPA regions to the Department of Justice. For those cases coming through headquarters we committed last fall to reducing that time, and we have been successful at it. I believe in fiscal year 1982, it took 83 days and as of very recently, it takes less than 35 days.

We also have been experimenting with and will probably be attempting to expand the system of direct referrals. Previously, all referrals had to be reviewed by EPA headquarters. Now certain categories of relatively simple water cases may be referred directly to the Department of Justice without EPA headquarters review. Our preliminary assessment is the direct referrals are filed 2 to 3 weeks faster than cases routed to EPA headquarters. Again, I think it is a positive move in terms of law enforcement activity.

Another positive move is that we've issued in the past 18 months an increased amount of policy guidance; and this is important, because it is the way that we can help and see that the regional people who are going about the enforcement work are doing so in a consistent and effective manner. And one example of that is the National Municipal Policy. In January 1984, the Administrator signed the National Municipal Policy for POTW's requiring full compliance with the Clean Water Act by July 1, 1988, with or without Federal funding. The policy represents a definitive break, a definite break with the past tradition of tying compliance to the availability of Federal construction grants.

I think another area of positive movement is in the area of criminal enforcement. The Agency had developed a major criminal enforcement program since 1982. Beginning in 1982, we hired a staff of investigators. In July of 1984, these investigators were deputized and authorized to make arrests, execute search warrants and carry firearms. We've established criminal field offices in 9 of our 10 regions and will soon establish a criminal office in the 10th. We also have an Office of Criminal Enforcement in the Office of Enforcement and Compliance Monitoring. We've brought a number of criminal water cases since 1982, showing that the commitment of significant Agency resources is producing a criminal enforcement effort and presence.

And finally, I think one of the important steps, and it was referred to by Mr. Ravan in his testimony, is the unification of State and Federal enforcement efforts. The agency had not looked closely at the joint organization of State and Federal enforcement efforts, at least not for many years. In June 1984, a Federal-State task force established guidance on what constitutes a timely and appropriate enforcement response by State and by EPA. The guidance also sets forth criteria for direct EPA action in NPDES delegated States.

During fiscal year 1985, the guidance will be translated into individual State-Federal agreements which we believe will gain quicker State enforcement responses and also set clear guidelines for EPA enforcement in the absence of State action.

In sum, there are some differences in the approach that we're taking now as regards enforcement in my office and what we did 18 months ago. I believe the differences have had, and will continue to have and increasingly have, a positive enforcement result.

And I, too, would be happy to take any questions that you all might have.

[The statements of Mr. Ravan and Ms. Price follow:]

TESTIMONY OF JACK E. RAVAN, ASSISTANT ADMINISTRATOR FOR WATER

Good morning Mr. Chairman and Members of the Subcommittee. I am pleased to be here again for my "six month check-up," and to talk about what we have learned about the health of the National Pollutant Discharge Elimination System (NPDES) since I last appeared before you. With me here today are the same people who accompanied me before: Rebecca W. Hanmer, the Director of the Office of Water Enforcement and Permits; and two of our Regional Water Division Directors, Paul Traina from Region IV and Myron Knudson from Region VI.

As you will recall, when I appeared before you in March, I was relatively new to my position. You expressed your deep concern over the persistent problems with noncompliance in the NPDES program, but you were gracious enough not to hold me responsible for what had happened before my "watch." Today my time has come, and I am pleased to be here to tell you what I have learned, what I see as the challenge before us, and what I am doing to to strengthen the NPDES program.

First, however, I want to reinforce a point that I made to you last time: this Agency considers enforcement of the national environmental laws one of its top priorities. Both the Administrator and the Deputy Administrator have pressed the Assistant Administrators, Regional Administrators and States to improve their performance. This Agency has the will to enforce, and, as I will show you later, the results of our efforts are just now coming in and they are positive. They demonstrate that the system is responding, and that enforcement activity levels are up in the NPDES program.

But I am not here to talk merely about statistics on enforcement activity and compliance rates. Numbers can give us only partial knowledge about the health of the NPDES program. My mission today is to report on what I have learned about the basic integrity of the NPDES program, and the theme of my prepared remarks is simply this: the NPDES program is no longer primarily a Federal program. The States are the majority administrators of this program, and we have to make some major mid-course adjustments in order to preserve and enhance the health of the NPDES program, which is now a shared Federal-State enterprise.

Let me explain how we arrived at our conclusions. Over the past six months, we have been engaged in three major compliance-related activities: a sizable experiment in the Agency's Strategic Planning and Management System (SPMS) involving a select universe of major dischargers who were in significant noncompliance with their NPDES permits; an in-depth management review of the NPDES program in all ten EPA Regions; and development of a major new piece of guidance: "National Guidance for Oversight of NPDES Programs." These three separate activities gave us an opportunity to examine the major aspects of the NPDES program in some depth, and to diagnose the problems as ones that are primarily systemic in nature. By that I mean that our problems are related mostly to process, and our remedies must focus on how to bring about and to maintain a consistent regulatory approach in the shared Federal-State NPDES program.

I believe that most of you already know about the management experiment and the Regional reviews, which we had planned or were underway when I appeared before you in March. We did not begin the guidance exercise until April, so I want to spend a few minutes explaining what we did and how we went about it.

As you may know, when Bill Ruckelshaus returned to the Agency last year, he almost immediately commissioned a State/Federal Roles Task Force. This group of senior EPA and State representatives was asked to take a hard look at the appropriate roles of State and Federal governments in the protection of the Nation's environment, and to more clearly define "who is supposed to do what."

Based on the findings of this Task Force, the Administrator issued two Agency policies on delegation and oversight in April of this year. Under these policies, the EPA Headquarters program offices were charged with the responsibility for establishing overall program design and management, developing national program guidance, evaluating the EPA Regions, and establishing a framework for the Regions to oversee the States.

Immediately after these policies were published in early April, Al Alm set up an Agencywide Steering Committee to articulate Agency enforcement policy in such vital areas as criteria for oversight of Regional and State enforcement programs, the circumstances under which EPA would take direct Federal enforcement action in an approved State, and the protocol for EPA to notify and to consult with States before the Agency initiates direct Federal enforcement action in a State. The purpose of this exercise was to define, in a comprehensive manner, the roles and responsibilities of the EPA Regions and the States in the various media enforcement programs. Each media office then formed its own task force to work out the details of how to apply Agency policy to its particular program.

In water, our task force consisted of compliance and enforcement managers from the EPA Regions and States (both approved and unapproved), as well as representation from the Association of State and Interstate Water Pollution Control Administrators (ASIWPCA). Much of what we learned about how the regions and the States discharge their NPDES responsibilities came from the discussions that occurred at the meetings of our task force.

The product of our efforts is a new piece of guidance, which sets out some basic ground rules for Regions and States to follow in running their NPDES programs and for EPA Headquarters and Regions to use in overseeing the NPDES program. To ensure that the principles in the guidance are rigorously caried out, the Regions and States are now in the process of negotiating formal, written agreements for FY 1985.

I cannot speak for other programs, but I can say that--in the NPDES program—this guidance marks a significant step forward. While we have set out requirements and expectations for Regional enforcement programs in the past, the Agency has not had a management and reporting system that would help us maintain a consistent approach to implementation of those requirements. The result is that we have not achieved the level of consistent enforcement response we would all like to see in the ten EPA Regions and the States. Our new guidance represents the first time that we have had a statement of national norms of behavior for *both* Regional and State enforcement programs, combined with formal, written agreements and linked to the Agency's management and reporting system.

I will be talking about the details of our guidance throughout my remarks. Now I want to move on to explain briefly what we learned from each of the three exercises I mentioned earlier, and how our findings in each activity kept bringing us back to the conclusion I outlined for you.

As you may recall from my previous testimony, we identified a specific category of more than 1000 major municipal and industrial significant noncompliers that we planned to target for intensive review and follow up during FY 1984. This select, fixed-base universe consisted of all major dischargers that appeared on the Quarterly Noncompliance Report (QNCR) as of June 30, 1983. If I remember correctly, some of you were especially intrigued by the idea that I had committed under the Administrator's tracking system to have our ten Regions bring every one of these significant noncompliers back into compliance or under a formal enforcement action by the end of the fiscal year.

I suspect that some of you are curious to find out whether I succeeded in this ambitious undertaking. Unfortunately, because of the timing of this hearing and our normal quarterly reporting cycles, I will not receive the final count until October 1. I did, however, ask the Regions to go through a special exercise to get the most current data for you. Based on what the Regions have reported, it appears that approximately 998 of the original universe will be returned to compliance or under a formal enforcement action. This translates into a success rate of over 97 percent, or better than four violators per day over the past eight months. I will be happy to discuss this with you further after my prepared remarks, and to give you our initial assessment of the nature of the remaining 26 noncompliers.

Even without the final numbers, I can tell you one thing I learned from this experiment: we need to shorten the length of time it takes to get these significant violators back into compliance or under a formal enforcement action. As of March 31, 1984, or nine months after these violations appeared on the QNCR, approximately 350 of these significant violators were outliers—still neither in complinace nor on a schedule. Now that we have substantially eliminated the "backlog"of major noncompliers, however, I expect to reduce the length of time it takes to accomplish this with new significant noncompliers in FY 1985. In fact, under the Agency's management and reporting system, our goal for the coming year is for the Regions and States to have these noncompliers in compliance or under formal enforcement action in no more than two quarterly reporting periods.

Now I want to move on to what we learned from our Regional NPDES Management Reviews, which occurred at virtually the same time we were working with our task force to develop our new "National Guidance for Oversight of the NPDES Program." It was the juxtaposition of these two activities that focused our attention on certain recurrent problems and led us to our conclusions.

For this discussion, I want to return to the pyramid that I used in my earlier testimony (attachment #1), and to explain the somewhat different roles of the Federal government and the States in the various functional areas of the NPDES program: permitting, self-reporting and compliance monitoring, and enforcement.

At the present time, there are 35 States and one territory that are approved to administer the NPDES program. These States are authorized to issue permits in lieu of the Federal government, to track and verify compliance with those permit requirements, and to take enforcement action against violators. After a State is approved to administer the NPDES program, the Federal government has concurrent enforcement authority; however, it is generally understood that the State assumes primary responsibility for enforcement after approval of its NPDES program.

We all accept the fact that the respective roles of the Federal government and the State in permitting, compliance, and enforcement are altered when a State program is approved. But the truth is that we need a more careful analysis of exactly how these roles are changed by State program approval.

When a State is approved to administer the NPDES program, EPA relinquishes its authority to issue permits in that State. Under its regulations, EPA can review and comment on permits before they are issued by the approved State. EPA may also veto an inappropriate State permit in those rare cases when the State's permit does not satisfy Federal minimum requirements. However, under the law, EPA cannot issue a permit when the State fails to act.

On the other hand, when a State is approved to administer the NPDES programs, EPA retains the right—and the responsibility—to initiate enforcement actions in that State. While the approved State has the primary responsibility for compliance and enforcement, the existence of an approved State program does not preclude enforcement action by the Federal government in that State.

With this in mind, I want to return to what we found during our ten Regional reviews and how we are addressing many of the deficiencies we discovered through our new oversight guidance. First, let's look at the NPDES permit program, which is the foundation of the pyramid. In terms of the numbers of permits issued in FY 1984, I am pleased to report that issuance rates for the Regions and the approved States are well ahead of the same period last year. The increased rate of permit issuance is due largely to increased management emphasis on timely permitting, plus the recent availability of Best Available Technology (BAT) effluent guidelines and additional EPA permit issuance resources. This combination of factors has enabled the administering agencies to rebuild permitting capability that lapsed while the guidelines were under development.

In a separate exercise, we also began looking at the quality of EPA-issued industrial permits, particularly in those Regions in which few States are approved to issue permits. Overall, we were gratified to find that the permits we examined were technically sound and well-documented. We also discovered some good approaches that we are encouraging other Regions to adopt, as well as a few areas where we need to provide better training and guidance to permit writers. We are already following up on these findings.

Looking ahead into FY 1985, it appears that most of the EPA Regions will meet the FY 1985 national goal of substantially eliminating the major permit backlog. Many of the NPDES States, however, will have great difficulty in achieving this goal and we expect a number of key NPDES States to lag seriously behind at the end of FY 1985. In some cases, it is doubtful that they will be able to achieve the national goal. To some extent this is a quantity versus quality issue, and our challenge is to eliminate the permit backlog without sacrificing permit quality.

Next let's look at what we found out about the bottom tier of the pyramid: the self-reporting and compliance monitoring part of the NPDES program or "how well we are doing in terms of discovering whether a violation has occurred and in deciding what to do in response." Again, keep in mind that EPA and the States share responsibility for NPDES compliance functions. In fact, even unapproved States often act as agents of EPA by performing many of the compliance monitoring and enforcement functions on behalf of the Agency.

In our Regional reviews of NPDES compliance monitoring activities, we concentrated on probing two areas that are most critical to the integrity of the NPDES self-reporting system: Are the permittees' Discharge Monitoring Reports (DMRs) being screened? If so, how? Are we making progress in getting the system automated?

Let me summarize our findings. We are making good progress toward getting the Regions and some States onto the national automated data system: the Permit Compliance System or PCS. When I was here in March, I reported that we had most of the Regions and eight States on PCS. We now have ten Regions and ten States that are using the system. By the end of FY 1985, we expect to have seven new States as users of PCS, as well as three approved States that will have data systems that interface with PCS. In all, by the end of FY 1985, we expect to have a total of 20 approved States that are either PCS users or have data systems that interface with PCS, in addition to the 15 States covered by EPA.

In developing our oversight guidance, we found that EPA's national goal of linking all of the States onto the national data system was one area in which we encountered some resistance from the States. Frankly, given the complicated nature of automated data systems, this was not entirely unexpected. It will take several years and lots of hard work before we can say we have successfully automated the NPDES program on a nationwide basis. I know this is an area of keen interest to the Members of this Subcommittee, and I assure you it will continue to be a high priority activity in the NPDES program.

With respect to screening DMRs, we found that some Regions are doing a more thorough job than others. For example, the length of time between receipt and review varied considerably from Region to Region, as did the criteria used for the review. In addition, we found differences in terms of the rigor with which the Regions documented their DMR review findings.

To bring a greater degree of uniformity to the compliance monitoring process, our new oversight guidance establishes minimum national standards for all administering agencies—Regions and approved States. For example, the administering agency is expected to review all DMRs for major permittees and enter the data into PCS within 30 days after receipt; the reviews should be based on prescribed criteria that are consistent with the national criteria. Each administering agency is also expected to evaluate all instances of noncompliance by major permittees and P.L. 92-500 minor permittees within 30 days of the identification of a violation, determine the appropriate enforcement response, and document any action taken or not taken (including the technical reason). These minimum standards are being written into EPA/State enforcement agreements for FY 1985, which will help ensure that they are actually put into practice.

Moving next to the middle tier of the pyramid, let me summarize what we learned about our first level of enforcement responses to known violations. Appropriate first level responses include telephone calls, warning letters, and follow-up inspections. In the EPA Regions, "appropriate" responses are prescribed by EPA's Enforcement Management System (EMS), which was developed back in 1977-78. While the Regions were required to implement the EMS standardized procedures for determining the appropriate response, States were not. In addition, the 1977 EMS was silent with respect to the "timeliness" of appropriate enforcement responses. Generally speaking, we found that, in the absence of specific milestones for action, some Regions and States may tend to negotiate too long with the permittee before initiating enforcement action. This, of course, can lead to extensive delay between the time a violation is discovered and the time enforcement action is initiated.

A second problem has been the absence of a consistent definition of significant noncompliance for the Regions and States to use in compiling their Quarterly Noncompliance Reports (QNCRs). As you may recall from my previous testimony, we have been working with the Regions and States on this definition. I am pleased to report to you that the proposed regulation, which is formally entitled "NPDES Noncompliance and Program Reporting," appeared in the Federal Register on July 23, 1984. We just extended the comment period, which will now close on September 21. We expect to be able to publish a final regulation about the end of this year, which will give us a consistent, nationwide reporting system and will provide a basis for a standardized definition of "significant noncompliance." You should be aware that we have invited comment not only on the specific criteria for identifying the priority significant noncompliers, but also on the statistical reporting that should be done for both significant and less significant—but "noteworthly"—noncompliers.

Moving up to the top tier of the pyramid, you will see that I have added a hatch mark to divide the apex of the triangle into two sections. My particular area of responsibility covers the area below the hatch mark: formal, administrative enforcement responses such as Notices of Violation (NOVs) and Administrative Orders (AOs). The area above the hatch mark represents judicial enforcement actions—referrals and consent decrees—for which Courtney Price, the Assistant Administrator for Enforcement and Compliance Monitoring, has principal legal responsibility. Our role is to provide the legal staff with the technical assistance it needs in preparing and litigating cases under the Clean Water Act. Ms. Price's staff worked with us on developing our NPDES oversight guidance, and participated in our Regional NPDES reviews.

In terms of my particular area of responsibility—formal, administrative enforcement actions—I am very pleased to report that the level of activity in the Regions is significantly ahead of the same time last year. In fact, the number of AOs issued to major municipal and industrial violators is running 2-3 times above the FY 1983 numbers. I am convinced that this improved performance is due largely to the strong support, direction, and personal involvement of Bill Ruckelshaus and Al Alm on down the line, and I assure you that we plan to continue pressing the EPA Regions to keep up our current momentum.

In this regard, we also found some areas where we must improve our performance. For example, we need far greater consistency with respect to enforcement practices among the Regions—especially the length of time that elapses before a Region takes a formal enforcement action in an approved State. This is partially related to the problem I mentioned earlier: the fact that the National EMS is silent with respect to the timeliness of enforcement actions. It also reflects the Agency's historic deference to approved States and the absence of specific agreement on the nationwide procedures for undertaking direct EPA action in approved States.

I believe the new EPA/State enforcement agreements will help improve the timeliness of NPDES enforcement actions by formalizing the specific timeframes within which we expect Regions and States to initiate formal enforcement action. Under the principles set forth in our new guidance, by the time a major discharger appears on the QNCR, the administering agency is expected to have initiated some kind of enforcement action to achieve compliance—formal or informal. Prior to the permittee appearing on the subsequent QNCR for the same violation, however, the permittee should either be in compliance, or the administering agency should have taken formal enforcement action to achieve full compliance—AO, NOV, or judicial referral. Furthermore, it is understood by all parties—Regions and States alike—that if the State has not taken action by that time, EPA will. We will be tracking the Regions' progress through the Agency's FY 1985 management accountability system, which also requires the Regions to provide us with a quarterly list of these "persistent violators" by name.

I regard this as a fundamental break with the past in the NPDES program, and, while I anticipate some problems—even resistance—from the States during the initial phase-in period, I think that both parties will have a better understanding of their roles and responsibilities, and that we will see a great improvement in the way the NPDES enforcement program operates in the Regions and the States.

Before leaving this subject, I want to say a word about the quality of AOs issued by EPA because numbers alone do not give us a true reading of the health of the enforcement program. We asked a contractor to assist us in looking at the EPA AOs that have been issued for the select, fixed-base universe of significant noncompliers in order to get a feeling for the overall quality of these orders. Based upon preliminary findings, we were not completely satisfied with some of what we found, such as issuance of AOs that did not contain expeditious, fixed dates for compliance. At the same time, we were pleased that our study found that the majority of the EPA-issued AOs were appropriate and complete.

We are in the process of notifying the Regions of our study results, and will update our AO quality guidance this Fall. We are also informing the Regions that we intend to continue monitoring the quality of AOs, and we have asked them to undertake a comparable review of the quality of State-issued AOs in FY 1985.

That sums up what we learned about the health of our NPDES enforcement program over the last six months and what we plan to do about the problems we uncovered. All in all, I think we have done a good job in a number of key areas. Activity levels in the Regions are well ahead of last year—both in NPDES permitting and enforcement actions. About 998 of our most significant noncompliers are returned to compliance or under a formal enforcement action. We have made progress getting our NPDES data base automated. We have a proposed regulation that will give us a consistent, nationwide reporting system and will provide a basis for a standarized definition of "significant noncompliance," and we expect to have a final regulation by the end of this calendar year. And in early July we published new national guidance that set out national norms of behavior, which are being put into practice through formal, written agreements between the Regions and the States and tracked in the Agency's managment accountability system (SPMS).

But we know there is a great deal more work to be done, and we are forging ahead in several critical areas of the NPDES program. At the top of our list of work items is a fresh, new edition of the national "Enforcement Management System" to replace the earlier version that is now outdated. As part of this exercise, we will be working closely with Courtney Price and her staff to see whether there are more efficient and effective ways to use the judicial enforcement process. The issue here is to determine whether there are better criteria that will help the Regions and the States know when a judicial referral is the most appropriate course of action and whether there are more expeditious ways to prepare referrals so that we can avoid any unnecessary delays in the enforcement process.

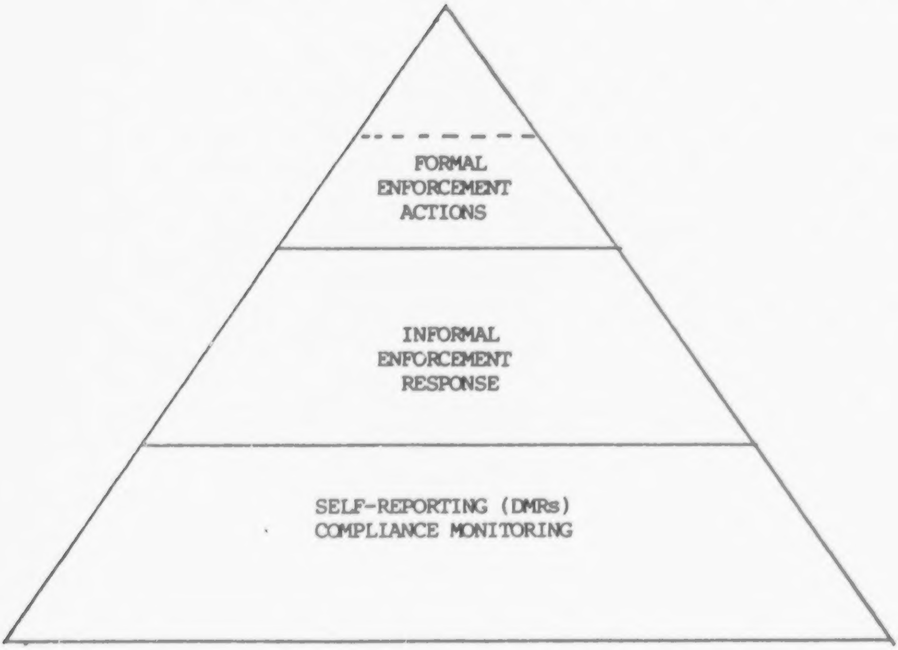
Also high on my list of priority activities for FY 1985 is a new penalty policy for the NPDES enforcement program. This is an area in which we found considerable variation in practices around the country, and a subject that we are already addressing so that we can cover use of penalties in our revised oversight guidance for FY 1986.

We are also looking at the issue of inspection coverage, and we are leaning towards new guidelines for conducting inspections along with better guidance on "who does what." The objective of this exercise is to see whether there are ways we can pomote higher quality coverage within our inspection resources. I am in the process now of issuing a new inspection manual.

In closing, the message I am trying to convey is simply this: Congress—through the law—established a framework based on national minimum standards and requirements, along with the flexibility for States to run the NPDES program—if they administered it according to national norms. What has actually happened over time is that we have paid a great deal of attention to approving State NPDES programs, so that the States now perform the majority of the permitting and compliance functions. Where we may need to improve our own EPA performance is in clearly defining this Agency's proper role after State program approval, in providing the Regions and the States with clear direction and national minimum standards for behavior, in managing and overseeing the performance of both the Regions and approved States to ensure national consistency in carrying out their NPDES responsibilities, and in making improvements to our own performance.

For, in the end, both EPA and the States have to be able to say, with credibility, that the approved State programs are as strong as, or stronger than the Federal program. No other posture seems viable in terms of the health of the NPDES program in the long run.

ATTACHMENT 1


FORMAL ENFORCEMENT ACTIONS
INFORMAL ENFORCEMENT RESPONSE
SELF-REPORTING (DMRs) COMPLIANCE MONITORING

TESTIMONY OF COURTNEY M. PRICE, ASSISTANT ADMINISTRATOR FOR ENFORCEMENT AND COMPLIANCE MONITORING

Good morning, Mr. Chairman and members of the subcommittee. It is a pleasure to appear before you to discuss the Agency's progress in water enforcement and to consider the challenges that lie ahead.

My Office of Enforcement and Compliance Monitoring (OECM) shares enforcement program responsibilities with the Office of Water (OW). OECM is responsible for the review of water enforcement case referrals prior to their transmittal to the Department of Justice (DOJ) for filing. OECM also works closely with the Department of Justice and EPA's Regional offices to encourage prompt case filings by DOJ and to assure proper case resolutions. All case settlements must be approved by OECM, and specifically by me, to ensure they support national enforcement goals and policy.

In addition, my office works with the Office of Water to develop enforcement policies and strategies. My office also has responsibility for general oversight and evaluation of EPA's various enforcement programs as part of the Agency's strategic planning and management system. As part of my office's enforcement oversight responsibilities, OECM also participated in the ten Regional enforcement reviews that were conducted by the Office of Water Enforcement and Permits (OWEP) during the spring and summer of 1984.

I want to share with you the perceptions I have gained concerning water enforcement. During the spring and summer of 1983, it became clear to me that review of Regional cases was taking too long at EPA Headquarters prior to referral to the Department of Justice. I wanted to speed the referral process and to establish a time frame against which my attorneys would be held accountable. To achieve these goals, the Agency signed an agreement on September 29, 1983, with the Department of Justice under which each of my media divisions, including water, was committed to review case referrals within twenty-one days of receipt. In the same agreement, I committed to a personal review and transmittal of cases to the Department of Justice within the subsequent fourteen days. Under this agreement, cases would be held at Headquarters no more than thirty-five days prior to referral.

The September 29, 1983, agreement has significantly cut case processing time by my office. I want to give you some statistics on this for water cases. These statistics are derived from a variety of EPA sources, primarily computer records. In FY82, the average Headquarters processing time was 83 days per water case. Although this number fell to 45 days per case in FY83, it was still too high. Under our present procedures, the number has dropped to just under 35 days per water case in FY84. And the number is really three to five days lower, because our computer records show the date the case was sent by the Region, rather than the date it was received at EPA Headquarters. The bottom line is that we have cut Headquarters case processing time by more than fifty percent since FY82.

In addition, the Agency wanted to try an experiment of direct referral of certain cases by Regional offices to the Department of Justice as a means of speeding case filings. Under the September 29, 1983 agreement with the Department of Justice, a separate Headquarters review was eliminated for categories of water cases with relatively simple factual and legal issues. Those cases may be referred directly from the Regional offices to DOJ Headquarters without prior EPA Headquarters review. Fifteen water cases (many of which are under the Safe Drinking Water Act) have been referred directly by the Regions without Headquarters review in FY84. Although it is still early in this experiment, our six month assessment indicates that cases directly referred will be filed two to three weeks faster than cases reviewed by EPA Headquarters. I must, however, caution that the prompt filing of direct referrals may in part relate to the less complicated nature of these cases.

Of course, an important question is whether these accelerated procedures have affected the quantity and quality of water case referrals. Under the new procedures, case referrals from EPA Regional offices to EPA Headquarters and direct referrals to the Department of Justice have increased under the Clean Water Act and the Safe Drinking Water Act from 55 in FY83 to 68 through the first three quarters of FY84. Our computer records combine Clean Water Act cases and Safe Drinking Water Act cases for statistical purposes. To put these numbers in perspective, Clean Water Act and Safe Drinking Water Act case referrals in FY82 numbered 60. In FY81 only 33 water cases were referred under both acts. I like to think that the increased number of referrals in FY84, as contrasted with FY83, shows that our expedited referral procedures have encouraged the Regions to become more enforcement oriented and to prepare more cases.

At the same time, I must ask whether the decreased review time by EPA Headquarters has decreased the quality of referrals. This is a difficult question to answer, particularly since FY84 is not yet complete. However, to-date, only three Clean Water Act cases have been returned to the Region by EPA Headquarters in FY84 for futher work. One case was declined by EPA Headquarters in FY83. One Clean Water Act case was withdrawn by the Regions in FY84. Three water cases were withdrawn by the Regions in FY83. No water cases have been declined by the Department of Justice to-date in FY84. EPA withdraw four Clean Water Act referrals from DOJ in FY83 but has not withdrawn any civil referrals from DOJ in FY84. These statistics, although preliminary, suggest no loss in water case preparation quality under our present expedited referral procedures.

I continue to ask what steps might further expedite compliance. In the case of water, I think the Congress could greatly facilitate our enforcement program by the addition of administrative penalties to the Clean Water Act. The Administrator has testified in favor of the addition of administrative penalty authority. We have been advised by our Regional offices that many of the present case referrals would be handled alternatively under expedited administrative penalty procedures if those procedures were part of the Clean Water Act.

I am also a strong proponent of the Agency's criminal enforcement program. Beginning in the fall of 1982, the Agency hired an in-house staff of twenty-three criminal investigators. Each of the agents has a minimum of eight years of law enforcement experience. In July 1984, the agents were deputized on a 90 day basis by the Department of Justice as Special Deputy United States Marshals. In that capacity, they are authorized to execute search warrants, to make arrests and to carry firearms.

The criminals investigative staff is part of the National Enforcement Investigations Center (NEIC), which is headquartered in Denver, Colorado and which reports to me. The agents operate out of nine field offices, as well as at EPA Headquarters. By the end of 1984, we expect to open a field office in Dallas, which will give us a criminal field office in each of our ten Regions. The criminal investigators complement the Agency's attorneys experienced in both criminal and environmental law. These attorneys are part of the Office of Criminal Enforcement, a unit of OECM.

I believe that this increased capability to investigate and prosecute criminal violations brings a strong new dimension to the Agency's enforcement program. Criminal enforcement on such an organized scale is still a relatively new program at EPA. However, since May 1982, convictions or guilty pleas have been obtained in nine criminal cases with water counts, as well as counts under other statutes. Two other water criminal indictments are now pending. These cases have often involved unpermitted discharges, including toxic chemical discharges. Several of these cases have resulted in six figure criminal fines and a prison sentence in one instance.

In the area of oversight and evaluation of our enforcement efforts, it has become clear to me that any evaluation of the success of this natural program must include (1) clear and predictable guidance on what is expected by way of enforcement response and escalation and (2) a thorough understanding of how well the program is functioning at the state level as well as the federal level. Under the Clean Water Act, thirty-five separate jurisdictions at the state level now administer the NPDES permit programs for industrial and municipal wastewater dischargers. Effective policies and practices among the state programs and those administered by the EPA Regions is important to ensure timely and appropriate enforcement responses to incidents of violations.

Unifying the state and federal enforcement efforts may have been the most important undertaking the Agency has pursued this year on enforcement. At the initiative of the Deputy Administrator, my office took the lead in forming a Steering Committee on the State/Federal Enforcement Relationship in April of this year. The group is comprised of officers of state environmental agencies, representatives of associations of state and local officials, and EPA Regional and Headquarters personnel.

In June, this committee and its media-specific component task groups issued a Policy Framework for State/Federal Enforcement "Agreements." For each of the specific media, including water, this document provides guidance to the states and EPA Regions on what constitutes timely and appropriate enforcement responses. It also sets forth criteria for direct EPA action in approved NPDES states. This guidance should provide for consistent application of enforcement measures as well as an emphasis on the expeditious return of permittees to compliance.

Each media program is producing corresponding guidance for administering their particular areas and are developing individual State/EPA enforcement agreements to reflect that guidance. We hope that for FY85 these agreements will lead to a much clearer definition of the state and Federal enforcement roles and improve the timely and appropriate nature of enforcement action at both the state and Federal level, consistent with stated expectations. The guidance will also enhance our ability to speak for the success of the national program, including state actions. It provides for consistent definitions and state reporting of the same measures used to assess EPA performance.

In closing, I want to stress that our goal is to have a strong, effective enforcement program. I believe that a key to greater compliance is prompt enforcement. That is why I am firmly committed to the expedited case referral procedures I have outlined to you. I thank you for the opportunity to appear today, and I will try to answer any questions you may have.

Mr. LEVITAS. Thank you very much, both you, Ms. Price, and you, Mr. Ravan. And I want to make it clear that your prepared statements, each of your prepared statements, will be made part of the record, in their entirety, at the proper place.

And also, it's good to see you looking so well, Jack. I think you had just gotten home before that Pine Isle meeting that Mr. Ruckelshaus and I spoke to a few weeks ago, and I heard, and I am glad to see you in good shape.

Mr. RAVAN. Thank you.

Mr. LEVITAS. Before I get into my questions, Mr. Daub has to attend another meeting and has asked for the opportunity to ask a couple of questions, and I will let him ask them at this point.

Mr. DAUB. I appreciate your deference, Mr. Chairman. I would simply say that I know you were in the room and heard my concern, and I would like you to look into the matter of the letter which I did send to the administrator today, not just for the sake of Omaha, NE. As I am starting to examine this issue, I find that you've got problems in attempting to strictly comply with the discharge permit. On the water side, we're creating a problem where we may not be paying enough attention to the resulting air problem, the clean air problem.

I would like an analysis of that complication. Mr. Ravan could you do that and perhaps let this oversight committee have the benefit of your thinking on that subject as well.

Mr. RAVAN. Yes, sir, I will.

Mr. DAUB. I appreciate the opportunity to be here, Mr. Chairman, and I thank you very much.

Mr. LEVITAS. Thank you very much, Mr. Daub, and I'm sure that will be attended to.

Mr. RAVAN. Yes, sir.

Mr. LEVITAS. Let me start off with a few questions, and I will not go through all of mine, because they touch on a variety of different points, but one thing that struck me as interesting—and you remember the old French proverb, "Plus ça change, plus ça meme chose"—"The more things change, the more they remain the same." And reading from a volume in which some testimony was given, these words appear: "Beyond expanding the present permit program to cover all discharging points into the nation's waters, the bill affords EPA the opportunity to extricate the permit program from its current judicial morass." And it makes reference to some court decisions which have "encumbered the program with an overwhelming administrative burden which has practically precluded permit issuance and suspended industrial enforcement actions." Momentum has been lost, and we've got to, you know, get on with it.

That is from a statement by William Ruckelshaus, commenting on the Federal Water Pollution Control Act amendments of 1972 in a volume that was published in 1973. In, what, 11 or 12 years since then, we're still talking about the same thing, it seems to me. I don't know what that means in terms of progress, whether we're doing one thing after the other or the same thing over and over again. But that gets me into some of the specific questions that I want to begin with.

First is, since it flies at the heart of what we're talking about, I'd like to find out, how does EPA define major, as opposed to minor, discharges?

Mr. RAVAN. Mr. Chairman, basically, the difference between the major discharger and the minor discharger is quantity—the amount of discharge on a daily basis, and the content of that discharge. In other words, a particularly noxious discharge may very well be a major. Another factor would be that the discharge is located on water quality limited segment of a stream versus a fairly large flowing stream such as the Mississippi.

I'll ask Ms. Hanmer to give you some more detail as to the difference between the two.

Ms. HANMER. To expand on what he has said, the basic difference is that, in the municipal area, we do define major as a plant that has 1 million gallons per day or more. In the industrial area, we have a complicated formula and a major is someone who gets 80 points on that formula. And that formula takes into account toxicity, volume and nature of receiving stream. And as I said, it's a complicated formula, that we could provide you.

Mr. MOLINARI. Excuse me. May I interrupt?

Mr. LEVITAS. Mr. Molinari.

Mr. MOLINARI. Isn't the population density and the nearby area entered into the equation?

Mr. RAVAN. Indirectly, sir, it does.

Ms. HANMER. Yes.

Mr. MOLINARI. That was one criteria.

Ms. HANMER. It's the service area. It's the service of the plant, not the population surrounding the plant. It's the number of people served by the plant, any entity of 10,000.

Mr. LEVITAS. Of those discharges that are classified as minor, are there ever reviews—I guess there are about 30,000 or 40,000 of them. Are they ever reviewed to determine whether they ought to be reclassified?

Ms. HANMER. Yes, we do periodically do reviews. As a matter of fact, the latest industrial classification is a scheme that was developed about 3 years ago, and we are beginning a quadrennial review of the definition to determine whether or not we should especially increase the weight being given to toxicity.

Mr. LEVITAS. This review of the minors that I asked about, the figures that I have is that they're between 30,000 and 40,000. How many permits are now pending? What is your backlog now of unissued permits?

Ms. **Hanmer**. The backlog for majors of unissued permits is about 800 in EPA and about 2,400 in the States. The backlog of minors is in the thousands, in the high thousands.

Mr. **Ravan**. We have that right here, Mr. Chairman.

Mr. **Levitas**. While you are getting it, I'm sure you probably have this in proximity, how many are likely to be expiring within, say, the next year? So, to get some idea of what your workload is, because, you see, that relates, Ms. Hanmer, to the ability to review the existing ones. To what extent can you really review them, assuming you come up with new criteria. And I, for one, think others in Congress, are very concerned that toxicity, the presence of toxics and the toxicity of effluent be given much more consideration than it has been, generally.

Ms. **Hanmer**. In the past few years, as you know, we have concentrated on reissuance of permits to major dischargers. The figure I just gave to you, the figures on major dischargers, include not only the people who are expired now, but the people who will expire by the end of fiscal year 1985. So those figures do include thinking about who is going to expire. Right now, we think we'll have about 32,000 backlogged minor dischargers by the end of fiscal year 1985.

We are keeping up with the backlog of major dischargers in EPA. The States have given us commitments for fiscal year 1985 that indicate that they will make a substantial effort in that direction. We are not able to issue minor discharger permits at this point to keep up with the backlog, because of the emphasis on majors. We are hoping that once we clear up the major backlog, we can shift to a much more concentrated effort on minor dischargers.

Mr. **Levitas**. Thank you. Do you want to add anything to that, Mr. Ravan? You said you had some numbers there.

Mr. **Ravan**. That pretty well covered it. Mr. Chairman, as of September 14, 1984, just speaking for EPA responsibilities for the minor industrials, our estimate is that by the end of 1985, 4,289 or so will be expired. In fiscal year 1984, we will only get to, in terms of attention to those, 756. Now these are minor industrials. In the municipals, like numbers would be 1,500 expired by the end of fiscal year 1985, 313 addressed in fiscal year 1984. In the States, where most of the minor dischargers are located and which have the responsibility, industrial, 21,430. The States say they will be able to address about 3,200 by the end of fiscal year 1984. In municipal, about 5,000 will expire, 1,500 or so will be addressed.

Mr. **Levitas**. Thank you. Now let me go on to one or two other questions. You may be able to help us with this one, Mr. Ravan. I understand that—the figure I usually hear, that is quoted about the compliance success rate, with respect to the private sector—about 90 percent of the 4,000 or so major dischargers have come into compliance. And that is also one of the success stories we talked about. The information we get today from GAO would indicate that perhaps there's not as much success there as some of us thought to begin with, that there are some real major problems out there, in terms of noncompliance. The amount of red and blue on those charts certainly would indicate that.

My question to you is, how do you see this? It seems to me that we're having perhaps as much difficulty with compliance by the private sector as we have by the public sector.

Mr. RAVAN. Mr. Chairman, let me give you my views, especially based upon the last 11 months. First of all, I do believe there is a difference. Again, depending on that base definition which is sort of the cornerstone of this whole debate, estimates on the industrial sector or the private sector vary between 70 and 90 percent compliance. We tend to stick with the 90-91 percent compliance, because we get that number by subtracting noncompliance from the 100 percentile. That drives one to ask the question, what is your definition of noncompliance? And I again refer to that.

In the municipal sector or the so-called municipal dischargers, my own opinion is that the municipal dischargers are not in compliance to that same level. There are probably two basic reasons for that. And we get again that compliance rate by subtracting the noncompliance rate. And the two reasons for that, in my opinion, to this date, are: one, that compliance, since 1972—1971, 1972—has been based upon the availability of dollars under Title II: Construction Grants Program. And the second one is a lack of intensity on our part and on the part of the States to enforce against that municipalities, where they are, in fact, in noncompliance.

Mr. LEVITAS. I understand now the distinction you make between major and minor, municipal and nonmunicipal. And certainly in the case of municipal, quantity lies at the heart of it, and it is a factor, one of the factors in the industrial, as well. That is one of the things you get points for.

Ms. HANMER. Yes.

Mr. LEVITAS. And the minor, reviewed separately and undoubtedly treated separately. My question is this, that cumulatively the some 36,000 or so minor dischargers that out there, in the aggregate, contribute a significant quantity of the effluent to our streams, lakes and rivers of this country. And I have not seen any figures or data on the percentage of compliance with respect to the minor dischargers.

Do you have such information and could you share it with us?

Ms. HANMER. No, we do not have such information on a nationwide basis. In preparing for the March hearings, we did a survey of the regions. And what we got, basically, were guesstimates. Our computer system at this point only covers major dischargers. We're hoping to expand the system to cover minor municipal facilities built with Federal funding, the Public Law 92-500 universe, but we do not have a computerized data system for minor dischargers. That means we're getting our discharge information on discharge monitoring reports, but they're not being computerized in a way to make them readily accessible and available for computing statistics like that.

The estimates range from—it's about the same as the majors, to it's better than the majors, to it's worse than the majors. And I couldn't represent that as reliable.

Mr. LEVITAS. I see. Well, at this point, does EPA actually do any monitoring on its own of minor dischargers?

Ms. HANMER. Yes. We do. We have limited monitoring of minor dischargers. Our limited compliance monitoring is done when we think that there is a problem. We get a discharge monitoring report from a minor that shows violations or we have complaints. So that most of our inspections are, in fact, devoted to major dischargers. The States do much more inspecting of minor dischargers than we do, recalling that the inspections in the program are a combination of EPA and State inspections.

Mr. LEVITAS. Well, I've got a number of other questions on the State-Federal relationship, as well as the DOJ-EPA relationship and a whole series on that, but I think it would be in everybody's interest if I stopped at this point and reserved those questions and called on my colleague from New York.

Mr. MOLINARI. Thank you, Mr. Chairman. I was going to get into the DOJ area myself.

Mr. LEVITAS. Go ahead.

Mr. MOLINARI. We heard the chairman earlier read extracts from some internal correspondence within your agency, and a reading of those memoranda would seem to indicate a very serious problem exists with respect to the handing off of a matter to Justice and then the followup by the Department. Mr. Levitas read to you some of the excerpts from the memorandum dated July 30, 1984, from Mr. Sutfin to Mr. Ravan, and then I think, rather significantly, there is a followup memorandum, dated August 10, 1984, from Myron Knudsen, Director of the Water Management Division, to you, Mr. Ravan. To encapsulate his response, he said the memo was right on target and receives our full endorsement. And in effect, what we're being told is that Justice is sitting on their hands and not following through.

I hoped that in your prepared statements, that that question would have been at least discussed, but neither statement touched on it at all. If in fact, these charges are correct, then we have a very serious problem, and I think it would behoove this subcommittee at the earliest possible moment to get DOJ in here and find out why they're not moving faster. But the charges are very serious charges, and I think that we should start right off by finding out why they're not doing as they should or whether, in fact, Mr. Knudsen and Mr. Sutfin are incorrect in their conclusions.

Ms. PRICE. Well, may I take that?

Mr. RAVAN. May I introduce again, Courtney Price, Mr. Molinari, who has just one general statement regarding the documents which you referenced. What you're saying, with their respect to content, their authorship, so forth, is totally accurate. And the only reason I wanted to make this comment is to help you, the subcommittee, understand what is a new relationship at the Environmental Protection Agency. Programmatically, I am their Assistant Administrator for Water Enforcement, and especially this referral system that we now have established between the Agency and the Department of Justice is handled by Ms. Price, and that's why I want her to address that for you.

Ms. PRICE. I think that the situation is somewhere in between perhaps the tone, as it was described in the memo to which you refer, and everything being perfect. We do have a target date and we continually follow up with the Department to try to make sure the cases, once they reach the Department are filed within 60 days. Our analysis, and based upon those memos, the ones to which you refer, and also our continuing monitoring of the situation indicates that right now the time between referral to the Department of Justice and the filing of the complaint is 80 days. And that is too long, but we continually work with and talk with the Department about how that can be, how that time limit can be decreased. When we received the memos to which you referred, within a very few days thereafter, we formally and also informally began working with the Department to see if we couldn't figure out ways to decrease that time.

I think the Department is very sensitive to the fact that we want cases filed more quickly than 80 days, and I think they are taking some steps to reduce the time.

Richard Mays is the one—whom I introduced earlier, the Senior Enforcement Counsel—who has been working directly with the Department of Justice to see how we can reduce it.

And Richard, why don't you enlighten the committee as to exactly what steps you are taking on this particular issue.

Mr. MAYS. We, of course, deal on almost a daily basis with the Department of Justice and particularly with Mr. Steve Ramsey, who is the Chief of the Environmental Enforcement Section there. As a matter of practice, our office, which has oversight of the Judicial Enforcement Program in the agency, conducts monthly meetings within our office. I meet with each of our division directors. Mr. Unterberger, for example, and his staff and the others, to review all of our cases that are active, that have been referred either to headquarters or the Department of Justice. We all meet—each of our immediate divisions, Mr. Unterberger and his people, meet monthly with Mr. Ramsey and his assistant chiefs in the Department of Justice to discuss the cases and to make sure there are no glitches no problems in particular cases that are encountered, so that the cases can be moved along.

When we received the memorandum from Mr. Sutfin and also from Mr. Knudson, I met with Mr. Ramsey on several occasions, gave him copies of the memorandums and told him that we had done a brief study of our own records, our computer records, to determine the average length of time for cases between the time they were referred to Department of Justice and the time they were filed, and it indicated a period of 80 days. Our Memorandum of Understanding calls for the cases to be filed within 60 days or DOJ should explain why they haven't done that, which they do.

Mr. Ramsey is quite concerned about this. There are reasons why cases may not be filed within the 60-day period, particularly at this time. One of the reasons may be that we have referred a very large volume of cases in the last two quarters to the Department of Justice which has, I think, taxed somewhat their attorney resources in getting around to filing all of them. Another reason may be that some cases are more complex than others, require additional preparation, based upon the review of the Department of Justice and they ask the agency to provide additional information and additional workup.

There are a number of reasons why cases may not be able to be filed within the 60-day period. Mr. Ramsey has taken steps, since these memorandums were called to his attention, to remedy the problems, or at least to lessen the extent of the problems that are pointed out in the memorandums, including issuing instructions to his attorneys to not make requests for additional information, except where it's absolutely essential to do so to proceed with the case. And he's also developed a system for expedited settlement procedures while the case is being reviewed. So, I think the issue is being addressed, and, generally speaking, I think we're getting much better service from the Department of Justice than we have been over the last couple of years.

Mr. MOLINARI. The answers that I have received from Ms. Price and yourself seem to indicate that the sole or major complaint registered in this memorandum was the time limit within which action was taken. That does not seem to be the main thrust of the memorandum at all, but more so an unwillingness on the part of the Department of Justice to cooperate. We have statements, for example, charging the Justice Department, with severe recalcitrance. It says in Knudsen's statement, that:

> In Fiscal Year 1985, we expect to refer 12 to 15 cases, and the Department of Justice will settle only some three cases in this year. We simply cannot continue to build a volume larger and larger backlog of unsettled cases.

And then it says:

> For whatever reason DOJ has not exhibited any apparent motivation directed toward the efficient settlement of cases. It appears the DOJ is interested primarily in seeing that cases go to trial as opposed to pushing for rapid, out-of-court settlements.

If it were just simply a question where, instead of doing it in 60 days it's 80 days—well, you know, maybe the goal isn't being reached and it's not so serious. But again, we have a much more serious charge.

Ms. PRICE. Well, I think one thing, my response to that would be twofold: One is that the Department, specifically as a result, I believe, of some complaints from region 6, has instituted an expedited settlement policy. And those procedures, I believe, have gone out in a letter from Steve Ramsey to Paul Seals, the regional counsel from region 6. And again, I think this is a result of an expedited settlement policy as a result of some of these complaints.

I think that one of the other reasons for this perception may be that, at least procedurally, most of the settlement negotiations we review will take place prior to the referral to the Department of Justice. Because the referral to the Department of Justice is a request that they file a complaint and begin that inexorable move toward trial. And for them to begin preparing for trial in terms of management of their own resources, if they—because once you file the complaint, then the clock starts ticking, and the end of that is you've got to appear in court and try to win your case.

So, I think there's probably some feeling on the part of the Department and perhaps they can best speak for themselves. But this is my understanding of it, is that once we file it that we are requesting that they begin litigating it, and that absent some significant change in the position of the parties it will not settle, that's the reason we're asking them to begin devoting those resources toward preparing for. And it's a very resource intensive preparation, preparing for trial, and their feeling is that most of the negotiation should take place prior to our request that they file. But I think——

Mr. **Molinari**. Now we're getting back to Mr. Levitas' concern, and I would have to say that as a lawyer I share that concern. The mere fact that the matter has been sent to Justice on a referral basis doesn't mean—to an industrial client, for example, would mean, "Well, you've got plenty of time, yet, before the world is going to begin to close in on you." And they can continue violating administrative orders.

And I don't know if you are prepared to be able to give us some estimates as to time sequence in the average case, from the time you refer to Justice to the time you come to trial. I suspect that it differs from region to region, but I'd be very interested in seeing what the actual time delay is in between referral and trial.

Or, the other side of the coin is, of course, this issue of settlement. How many are being settled and how long does it take to settle?

Mr. **Levitas**. Before you answer that, if I may——

First of all, if you could, in responding to that question, just give us your candid opinion: Are you satisfied with the job that the Department of Justice is doing for EPA?

Ms. **Price**. Yes. I think that there are some problems, but I think that they are being addressed. And my experience with the Department, from when Carol Dinkins was there until today, is that they are——

[Pause for interruption.]

Ms. **Price**. My last statement?

Mr. **Levitas**. Go ahead.

Ms. **Price**. My feeling is that they are very anxious to do a good job. That's not to say there are not problems; there are. We bring them to their attention, and my feeling is that they do their best to do what we want them to do. As I said, there are problems; 80 days is too long for a case to languish.

Mr. **Levitas**. But you're satisfied.

Ms. **Price**. Yes. I think they're——

Mr. **Levitas**. My next question is very brief. There is a facility nearby here called the Blue Plains water treatment plant. Right?

Ms. **Price**. Yes, sir.

Mr. **Levitas**. Remember that one?

Ms. **Price**. I do.

Mr. **Levitas**. When was that matter referred to DOJ for action?

Ms. **Price**. I'm not sure when it was referred to DOJ for action, but I know that the region requested a couple of times that the complaint not be filed because they were negotiating, and that was on the basis of the regional request that the complaint not be filed. Because they wanted to file a complaint at the time they filed the consent decree.

Is my recollection accurate on that, Glenn?

Mr. **Unterberger**. That is correct.

Ms. **Price**. That's happened in a number of cases. What happens is, they'll refer it up, because they want to start the process; but if it appears that they are about to settle, we'll request that the Department not file because they are about to agree to a consent decree. So, I know for a fact that the region did request that.

Mr. LEVITAS. I'm going to make part of the record an article that appeared in the Washington Post on August 14, concerning the settlement of that case, referring to the EPA compliance order that was issued in 1980 and the settlement of $50,000 that was made. And the corporation counsel, Inez Smith Reid, was quoted as saying, quote: " 'This is low compared to what they were trying to get out of us,' Reid said."

[The Washington Post article referred to follows:]

District Agrees to Pay $50,000 For River Pollution Violations

Post – 8/14/84 – B3

By Sandra Evans
Washington Post Staff Writer

The District has agreed to pay the federal government a $50,000 fine for violations of pollution standards on the Potomac River and to pay between $500 and $2,000 a day for any future violations.

The penalties are part of a consent decree negotiated with the federal government on the future operation of the Blue Plains sewage treatment plant, which has not complied with Clean Water Act standards.

Terms of the decree, which was signed Friday by the D.C. government, still must be officially approved by the U.S. Environmental Protection Agency and the Justice Department before the decree is filed in court. An EPA official said the decree represented a negotiated agreement.

The EPA had issued an order of compliance against the city in 1980 for violations of effluent standards on the Potomac but found earlier this year that the city had been in violation for major discharges for the preceding 18 months. A consent decree makes it easier for the federal government to penalize the city if it fails to comply in the future.

Blue Plains is a regional sewage treatment plant operated by the District government with costs shared proportionately by area jurisdictions.

Under the negotiated agreement, the District will hire 269 new employes over three years and correct equipment deficiencies at the plant.

In addition, it agreed to spend $200,000 by October 1986 on a new environmental engineering research center to find ways of improving waste water treatment and new uses of sludge.

The $50,000 lump-sum penalty for past violations is to be paid to the U.S. Treasury within 30 days of the entry of the consent decree in court, which could occur in the next few weeks, said D.C. Corporation Counsel Inez Smith Reid.

"[illegible] compared to what they were trying to get out of us," Reid said.

For future violations, the city agreed to pay $500 a day for the first 15 days, $1,000 a day for the next 15 and $2,000 for any day beyond that.

The city is exempted from having to meet the maximum chlorine residual limits until three months after it has completed a new dechlorination facility, and it does not have to pay penalties if the city can show a violation was due to circumstances beyond its control, Reid said.

The District also must correct defects in Blue Plains equipment that resulted in some of the pollution violations. The city announcement said it already had spent more than $1.5 million to repair more than 80 percent of the defective equipment identified by the EPA in February.

Rep. Stan Parris (R-Va.) has been pushing EPA Administrator William Ruckelshaus since last year to fine the District for the violations of the pollution standards. He charged that excessive phosphorus discharges were responsible for a serious algae buildup last year that sent green slime miles downstream last summer and fall.

Mr. LEVITAS. And if I remember correctly, Ms. Reid probably has an intimate working knowledge of EPA, having formerly been the inspector general of EPA. So, I mean, you know, it's that type of——

Ms. PRICE. I believe—in response to your question—that it was 90 days between the time that we referred the case to the Department and the consent decree and the complaint were filed. But the region had requested that the Department hold up, because they felt like they were right there and that if they filed a consent decree—I mean, filed a complaint—it might ruin the outcome. So——

Mr. MOLINARI. Do you have the actual dates there, Mr. Mays, in that computer printout?

Mr. MAYS. I have our computer printout, a copy of which we furnished to Mr. Prolman of your committee staff. It shows that we received the referral at headquarters from the regional office April 13, 1984, and we referred it to the Department of Justice on May 17, 1984—a period of a little bit over 30 days that we had it. However, as Ms. Price pointed out, the region was engaged in rather extensive and intensive negotiations with the District at the time the case was sent over, and they felt that they were getting close to achieving a result, so that they requested the case filing be delayed for fear that filing a suit may undo some of the negotiations that had taken place.

Mr. MOLINARI. I think it may be well to take a break at this point, Mr. Chairman, if you want to go vote.

Mr. LEVITAS. We have a quorum call, and when we get over to the floor we'll find out just why they're asking us to come visit with each other at this time.

But I'd just like to comment that I think this example really points out one of the problems we have. This is 3½ years from the time EPA says to a discharger, "You guys are violating your permit."

Now, then, that word gets out. How frightened and motivated to quick action do you think people are going to be when EPA enforcement people walk in—I don't suppose you wear your newly authorized guns when you go in, but you walk in and you say, "You guys are violating the law. What are you going to do about it? Because we're going to get you." And then somebody's going to say, "Well, it took them 3½ years to get a $50,000 fine and a consent decree in this particular matter." And they're going to say, "Maybe, you know, it's not such a frightening experience."

Ms. PRICE. Now let me ask Glenn to respond.

Mr. UNTERBERGER. The matter, I believe, in the Blue Plains case was fairly allocated—$50,000 was the penalty that was imposed, but in addition, the District of Columbia agreed to take 10 compliance measures, including hiring up to about 260 new staffers to assure adequate operation and maintenance of the facility. That's a large increase in the facility, and that we think is an important achievement as part of the case.

Mr. LEVITAS. And which they should have done to operate the plant properly to begin with.

Ms. PRICE. Yes.

Mr. LEVITAS. OK; we will stand in recess for, let's say, 15 minutes, and then we will resume; unless I call back with some other message.

[Recess.]

Mr. LEVITAS. I understand, Ms. Price, you wanted to make a further response.

Ms. PRICE. I just wanted to comment on a couple of points that were made with regard—that came up in connection with the Blue Plains case and also in discussing the service we're getting from the Department of Justice.

I had had a conversation with one of the authors of the memos to which you referred, regarding the time delays, the failure to settle, and the lack of attention on the part of the Department. And he did indicate that since his memo, and since our memorandum to the department, and the meetings that Mr. Mays described that he had, that there had been considerably more interest in the Department in terms of attitude, and also, that the service they were getting had improved to some considerable extent. Again, I don't think that means there are no problems or there won't be some in the future, but I just offer that.

Mr. LEVITAS. I'm pleased to get that. I think we all are. It is EPA's responsibility, after all, if you are not getting appropriate service, to make sure that you do, from the Justice Department.

Ms. PRICE. Exactly. And I feel that they have been responsive. It was reported to us, we pointed it out to the Department, and they have responded. As I said, that's not to say there won't be other problems.

Mr. LEVITAS. I am pleased to hear that. As I say, it is your responsibility to make sure——

Ms. PRICE. Yes, sir.

Mr. LEVITAS [continuing]. That you get service, because—you know, if I had a lawyer working for me, with the same performance record that they were demonstrating as reflected by those memos, I would have fired the lawyer and gotten me another one. I mean, that's the way it was.

Ms. PRICE. Yes.

Mr. LEVITAS. And while I realize you are somewhat constrained in that regard——

[Laughter.]

Mr. LEVITAS [continuing]. The fact of the matter is the same. And I must tell you—I mean, I don't know what inhouse loyalties there are, but that's exactly the type of situation where I would hope someone from EPA, whether it is the Administrator, or the Assistant Administrator, would come to the authorizing committees or the Appropriation Committees, and say, "You've given us this job to do. We can't get this job done getting this type of cooperation from the Justice Department."

Ms. PRICE. Well, one other—I was going to respond to your comment about the time it took from the discovery of violation—as best I understood your remarks in terms of Blue Plains—until the time that it was referred. One of the things that the guidance—policy guidance—that we issued in connection with the Federal-State Task Force on Federal EPA Agreements has to with the time that we would be expecting not only the States but the regions to act in terms of discovery of violation to the taking of some formal enforcement action. So, again, that's a problem. That's too long, but it's a problem that we are attempting to address, and I believe we put in place mechanisms that will allow us to address them in a more efficient manner.

Mr. LEVITAS. Mr. Molinari.

Mr. MOLINARI. It is interesting to listen to this conversation, because I had occasion, over a year or so ago, to fly over the Potomac, and see what I perceived to be a serious discoloration of the water nearby. I called EPA and they told me to refer my questions to D.C. I called them up, and they called me back late in the day the next day, and told me they had checked it out and there was nothing wrong with it, it was perfectly OK. I thought, "Well, I'll keep my mouth shut, I'm a little out of my territory."

On the question of the penalty, I notice in the newspaper accounts that Inez Smith Reid, the Corporation Counsel, said that she considered the fine to be low as opposed to what was being requested.

What was being requested originally?

Ms. PRICE. I'll have to provide that.

Mr. UNTERBERGER. We don't know how to answer that question. The case is being managed out of the regional office in region 3. They're the ones that——

Ms. PRICE. They negotiated——

Mr. UNTERBERGER [continuing]. With the Department of Justice.

Ms. PRICE. But we can provide that for the record if you want.

Mr. MOLINARI. Yes; it would be interesting, I think, to find that out.

[Information received from Ms. Price follows:]

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

October 31, 1984

Honorable Elliott H. Levitas
Chairman, Subcommittee on Investigations
and Oversight
Committee on Public Works and Transportation
House of Representatives
Washington, D.C. 20515

Dear Congressman Levitas:

At the September 20, 1984 hearing of the Subcommittee on Investigations and Oversight of the Committee on Public Works and Transportation, Congressman Molinari requested additional information regarding the Blue Plains Water Treatment Plant (See transcript, pp.103-110, enclosed). The enclosed narrative has been prepared for submission to the record in response to the Congressman's question. This document is based upon information provided by this Agency's Region III Office in Philadelphia which negotiated the settlement with the District of Columbia. I hope that it answers his question regarding the penalty amount in the Blue Plains consent decree.

As I am sure you are aware, public disclosure of the details of positions taken by the Agency in one particular case can, at times, impact the consent decree negotiations in other cases. In order to prevent any detrimental impact on the Agency's bargaining postiton in future cases I would ask that the enclosed narrative be considered confidential information.

Should you have any further questions regarding this consent decree, please feel free to contact me at 382-4137 or Glenn Unterberger at 475-8180.

Sincerely yours,

Richard H. Mays
Senior Enforcement Counsel

Enclosures

cc: Congressman Guy V. Molinari
Robert Prolman (Subcommitte Staff)
Steven Ramsey (DOJ)

	CONCURRENCES							
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SURNAME								
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RESPONSE TO REQUEST OF CONGRESSMAN MOLINARI REGARDING BLUE PLAINS
Transcript, pp. 103 - 110

On June 21, 1984, representatives of the District of Columbia and the Environmental Protection Agency met to discuss the Blue Plains treatment works. Regional Counsel Sheldon Novick advised the District that, if suit was filed and litigated, the District's maximum potential civil liability would be approximately $18 million. Regional Counsel Novick stated further that, if the matter could be settled upon consent, with the appropriate relief, a penalty of approximately $100,000 toward an environmentally beneficial project, and "some cash" penalty paid directly to the United States would probably be acceptable. The District responded that they would pay no penalty.

On June 26, 1984, the Agency gave the District a draft decree which was the first to identify a penalty amount. The penalty amount in the draft was $500,000, and was included for the purpose of beginning the penalty discussion. The amount was not offerred as a final nonnegotiable demand.

On July 16, 1984, Regional Counsel Novick and the District's Corporation Counsel, Inez Reid, again met to discuss settlement. Notes maintained by Agency staff indicate that the District offered to fund an environmentally beneficial project costing $200,000. Regional Counsel Novick responded that the Agency also required a cash penalty. Regional Counsel Novick stated that the $200,000 project and a cash penalty of approximately $75,000 would probably be acceptable. Corporation Counsel Reid discussed the District's financial capacity, and the expense of the repairs and additional hiring that would be required by the proposed decree, and stated that a penalty of $75,000 was too high. Regional Counsel Novick stated that the Agency would consider the $200,000 environmentally beneficial project and a cash penalty of $60,000. The District's Administator, Thomas Downs, suggested that the District representatives discuss the matter further and advise the Agency promptly.

On July 18, 1984, the District advised that it would agree to fund the $200,000 environmentally beneficial project and pay a cash penalty of $50,000.

A draft consent decree prepared on July 19 included the the $200,000 environmentally beneficial project and a cash penalty of $50,000. Subsequent drafts and the final executed decree retained the penalty amounts.

Mr. **Molinari**. You heard the dialog that took place before with respect to the preliminary water enforcement actions report. I started questioning the GAO panel, and they didn't seem to have the knowledge as to disparity in numbers. I use the term "disparity" for lack of a better term. It may not be disparity at all, but certainly if one were to look at the chart and to compare the numbers at region 6 to the other regions, we see a tremendous differential. Under the "Administrative Order" category for "Municipal Major Violations," 50 in the last quarter were assessed in that region as opposed to 68 in the entire 10 regions.

What is the true picture? Is this a true picture of enforcement activity of region 6? What accounts for the great disparity in numbers as opposed to that region and all the others?

Mr. **Ravan**. Mr. Molinari—if I may answer that—there are two reasons. Region 6, based in Dallas, has responsibility for all their States, for which are nondelegated NPDES States. Therefore, there is a certain heavy responsibility on them. Second, whereas EPA has 15 nondelegated NPDES States, region 6 has a third of our load, if you will, of direct responsibility States. Then it is incumbent upon region 6 to file those. That's the disparity in the numbers.

It also tends to indicate that there is an ease of action, if I may use that term, whereas the EPA is directly responsible for the State rather than having it have a go between.

Ms. **Price**. I also note, sir, that you had asked, in terms of the GAO, of the fellow who was testifying here, if they had any historical data as to what had transpired in region 6. And you do. And I think, again, it indicates a positive direction in terms of a level of enforcement activity. I believe they anticipate that there will be—well, going back, according to the charts, if we think about it, going back to 1980, there were 8 civil referrals; 1981, 4; 1982, 10; 1983, 9; and this year they anticipate 14, I believe is the number. And so I think, again, the movement there is in the direction of increased level of activity.

Likewise, in terms of NPDES administrative orders issued, in 1980, 201; in 1981, 186; in 1982, 89; in 1983, 279; and in 1984, projected 350. So, again, movement—and I think to which, certainly, in the area of civil referrals, across the board and across the media, the movement is an increased level of activity.

Mr. **Molinari**. Now, we heard the Louisiana figures. Louisiana is not a delegated State. Do we have any States that have requested this authority and have been rejected? Has a State requested delegation of authority to issue permits and been rejected?

Mr. **Ravan**. Yes, sir; in total and in varying degrees of rejection.

Mr. **Molinari**. Could you expand upon that answer for us?

Mr. **Ravan**. Yes. I'll ask Ms. Hanmer to expand some specifics.

Ms. **Hanmer**. We have several States we are working with now, and it's usually a matter of——

Mr. **Molinari**. Would you mind identifying them?

Ms. **Hanmer**. Well, an example would be Massachusetts.

Mr. **Molinari**. Yes.

Ms. **Hanmer**. They might need to change their statute, they might need to change their regulations, they might need to get more people before we would be able to approve delegation.

Recently I believe we have some interest from Louisiana, and perhaps Texas and Oklahoma. And we go into a process that takes some time, in which we work out all these issues, so that, when we delegate the State it's ready to go.

Mr. MOLINARI. So, Louisiana has made a request to be delegated.

Ms. HANMER. Most recently they have indicated an interest in delegation. I think theirs is a question of whether or not they have adequate resources.

Mr. MOLINARI. So that before you reach the point where you're going to grant them that authority, you make a rather exhaustive check of their resources and their personnel. For example, you check the caliber of their personnel to be sure that they're going to be able to do the job.

Ms. HANMER. Yes. There are a number of requirements under the law that we have to go through in order to make that approval.

Mr. MOLINARI. But in any event, you're still there as a backup, monitoring their activity, nevertheless.

Ms. HANMER. That is correct.

Mr. MOLINARI. And you will take your own samplings from time to time, independently, to assure that the dischargers are not in violation——

Ms. HANMER. That is correct.

Mr. MOLINARI [continuing]. Of the permit?

Ms. HANMER. One of the findings from our regional reviews this year was that there has been a wide variation among our regions in the extent to which they were backing up the approved States with enforcement actions. There is a very wide disparity. We have basically put out new guidance that limits that disparity and sets timeframes for how long they should wait before they take enforcement action in an approved State, and also sets out time guidelines for joint inspections. We have tightened up that situation considerably in the last few months.

Mr. MOLINARI. I have but one or two more questions, and I'll defer to my colleagues here.

Has there ever been a case where the authority has been delegated to a State and then withdrawn as the statutes provide because of the State's failure to perform?

Mr. RAVAN. No, sir, there has not been a case.

Mr. MOLINARI. OK, then, I'm going to ask one last question on this go-round. I'll address it to you, Jack, and I think that the record should reflect that I'm asking this with a half smile on my face.

You made a prediction when you last appeared before this committee, and I take it from your testimony that you are admitting failure in that prediction now. Is that accurate on my part?

[Pause.]

Mr. RAVAN. Let me direct——

Mr. MOLINARI. Let the record reflect that there's been a long pause here. [Laughter.]

Mr. RAVAN. Well, I made, perhaps, more than one prediction, Mr. Molinari. Which prediction am I to—— [Laughter.]

Mr. MOLINARI. Have any of your predictions come to pass? [Laughter.]

Mr. RAVAN. Well, I was hoping that you would ask me, because I think I get at least an "A"—not I, personally, obviously, but—and I wanted to comment on that—all the personnel.

You did demonstrate some interest with regard to my proposed 1,100 fixed-base number, I believe. Actually, when I got back home, Mr. Molinari, that number had shifted somewhat, and 1,024 was the actual number that we had fixed in time. And we are down to 25, so we are showing a 97-percent completion of that project. Quite honestly, I am surprised. I am the kind of manager who likes to set achievable goals, but I obviously was setting one there for the regions and the national program to do some stretch, meaning that we had to really work. And I'm pleased to report to you that we've achieved about a 97-percent completion.

Mr. MOLINARI. That's indeed very good.

Just one question on that. On page 6 you say that "approximately 998 of the original universe will be returned to compliance or under a formal enforcement action." What do you mean by "will" there? Do you mean by October 1?

Mr. RAVAN. Yes, sir.

Mr. MOLINARI. OK. I'll pass at this point, Mr. Chairman.

Mr. LEVITAS. Thank you, Mr. Molinari.

Mr. Wise.

Mr. WISE. Mr. Chairman, I have some questions but they go more toward a local area. Why don't we continue? Would it be all right if I just pass?

Mr. LEVITAS. Sure.

Mr. WISE. And some people can continue on this line of questioning.

Mr. LEVITAS. That will be fine. I appreciate that.

Mrs. Johnson.

Mrs. JOHNSON. Ms. Price, I may not be recalling this correctly, that's why I'm asking the question.

Would you say that on average cases are now at DOJ about 88 days?

Ms. PRICE. I believe that 80.1 days, I think, is the exact number according to our computer docket. That is from the time that my office refers it to the Department of Justice until the time a complaint is filed; in other words, the litigation actually begins.

Mrs. JOHNSON. I appreciate your sense that perhaps the problems aren't as serious as the memos imply and, also, that in some cases there would be a desire of those involved in the case to not file, but rather to negotiate. But the July 30 memo from Charles Sutfin refers to the average residence time as 166 days, which is clearly in excess of the memorandum of agreement. It also goes on to say that individual attorneys had made repeated inquiries as to the status of their cases, such as when they would be referred to the U.S. attorney and when they would be filed. All of this effort was to little avail. Early in the paragraph he mentions that EPA has acted in a timely fashion but that the problem is with the Department of Justice. He says, "To date, similar cases still reside with DOJ, Washington."

I guess what I'm really saying is that I fail to find your explanations convincing, in the sense that there seems to me a greater urgency and a bigger problem if you put those kinds of memos against the kind of statistics that have been referred to here today. In this case he talks about a lot of referrals, including settlements.

Are the efforts that you are making to expedite settlement going to handle both what has been a serious and an increasing problem?

Ms. PRICE. I cannot say—I mean, I cannot assure or ensure that they will handle them, but what I can say is, again, that it appears that the problem seems to be being resolved, ameliorated. If it is not, then we will take further action.

Mrs. JOHNSON. Well, was the heart of the problem in the past—add to the end—interest, or process, or resources?

Ms. PRICE. Well, again, I hesitate to speak for the Department, but my observation is, based upon what I've observed, a combination of matters. One, we referred very few cases in the first quarter this year. We referred a very large number in the second and third quarter this year. I think that part of what you are hearing in that memo is the frustration that it took some time for the Department to get caught up. I don't anticipate that they will stay behind the eight ball.

Mrs. JOHNSON. Well, did they put more people into this effort?

Ms. PRICE. I think some of it's that if you refer one case a day—let's say you refer 200 cases and you refer them every few days throughout the year, then a certain number of lawyers can handle them in a very timely fashion. If you refer 20 the first quarter and you refer 80 the second quarter, those that came in the second quarter will not be processed with the same number of people working on them as quickly as if they had come in in a steady flow. That's one of the problems that we would try to deal with.

Mrs. JOHNSON. So, there is no ability within DOJ to alter or redeploy its forces and its caseload?

Ms. PRICE. Well, I believe—and, again, I think my facts are accurate—they are increasing the number of lawyers to handle environmental cases as the work load picks up. And we anticipate it will continue at a higher level than it was in the first quarter of the year.

I think another part of the problem is that from time to time cases will be referred where they will not be ready to have a complaint filed, at least based upon the Department's analysis of it. The region sending it in may feel it's just perfect and the department may feel like, "Well, we need more information." I think that's not a desirable situation to have happen, but the point is that I think they are responding to our complaints and are doing so with some enthusiasm and in a fairly expeditious manner. And if it appears that this doesn't solve the problem, if we're still having it, you know, in a couple of months, then we'll go back and we'll take stronger action or come back to the committee, whatever. I mean, we'll not let this thing just languish; but I don't anticipate that will happen.

My experience has been that they are anxious to serve us well, and I just think that will continue.

Mrs. JOHNSON. Mr. Ravan, what is your opinion of the GAO study? You gave figures about compliance that indicate you think compliance varies from 70 to 90 percent. If you look at the GAO report, one would have to feel very disheartened about compliance. Seventy percent sounds incredibly optimistic, much less 90 percent.

In light of the report, why do you still propose those figures?

Mr. **Ravan**. Mrs. Johnson, I have two or three thoughts on the GAO report as of today. Having had——

Mrs. **Johnson**. Excuse me. Hadn't you seen it before today?

Mr. **Ravan**. I've had it 24 hours. I negotiated a settlement with GAO yesterday so that I could see a copy of their testimony, and I did get to read it last night.

No, seriously, I have three observations; and I do want to come back to the committee with more analysis on the report and the work to date. One is that it was a concentrated sample, clearly, perhaps in a difficult geographic element. Second, I think, it was certainly a small sample, which tended not to follow does not reflect—the national norms or trends. Third, I again come back to this definition where I tried to be responsive to GAO a year ago, perhaps December or so, when I saw the report. And that is why I am on the street now with this definition. It is not enough to simply find out what is the speed limit, if I may use a simplistic comparison. One must determine—as the chairman has pointed out—when are you going to get tough? What is your attitude toward that speed limit? Are you going to enforce it at 63 or 56? And this is the process that we are involved in, certainly late, in terms of this Agency and its lifetime of 13 or 14 years.

But our concentration of resources and activities—that is tc say, trying to get all States delegated so that they, in fact, could set that policy consistent with the national norm, is now upon us. And I hope this subcommittee will be helpful to me in setting that policy; which is to say, what is the definition of "significant noncompliance?"

One assumes that there is a built-in assumption that I think, again, the chairman was trying to get to: What is a minor permittee? Because it appears that we are not going after those in large numbers, and that is true. We are, in fact, trying to concentrate our forces, and we are trying to close on this issue of what is significant noncompliance because that drives the rate that I come over here and report to you. And, in any case, the GAO has just finished one final law case, and I believe—I'm not certain of this fact—they're counting time rather than pure violation. I think every time they see a violation of any kind come up on the screen, that blocks out that month; it does not address quality or quantity within that month. And I'd like to get back to you further with some analysis on what they've discovered.

Mrs. **Johnson**. I think you should get back to us with your analysis of what they have done. That would be very helpful to us all.

I would also like to commend you on addressing this issue of will, which is an important issue. I know when the public announcement came out for the region of New England, it was a good strong enforcement announcement, and very much welcomed by many of us. Will must be backed up by teeth.

Mr. **Ravan**. Yes.

Mrs. **Johnson**. I think we all want to see a very strong enforcement policy, not only in EPA but also backed up by DOJ.

Mr. **Levitas**. Thank you, Mrs. Johnson.

We're going to go around again. Do you want to do it this time?

Mr. **Wise**. Just catch me before we adjourn.

Mr. LEVITAS. OK—which I hope won't be much longer.

On page 5 of your testimony, Mr. Ravan, you say that you're talking about the guidance that you are issued from headquarters. And you say:

> While we have set out requirements and expectations for regional enforcement programs in the past, the Agency has not had a management and reporting system that would help us maintain a consistent approach to implementation of those requirements. The result is—

The result of that is—

> That we have not achieved the level of consistent enforcement response we would all like to see in the 10 regions in the States.

And then you say:

> The new guidance represents the first time we've had a statement of national norms of behavior.

Now, first of all, when you talk about "national norms of behavior," I'm not sure what you mean. You maybe could eluciate that somewhat for me. But what that paragraph says to me is that after all of these years that we've been looking at this problem, that on September 19, 1984, the Assistant Administrator comes in and says, "Well, we're going to get started on this."

Now, am I overstating it or understanding it?

Mr. RAVAN. My statement, Mr. Chairman, is a complete opportunity—as I always will—to be candid with you. No, sir, I wouldn't interpret that to mean that this is the beginning. I think we are 10 years, perhaps, into that—quote—"beginning." However, you and others, principally in authorship of that act, understand as well as we do the complexity with which the Agency approached putting in this large what I like to refer to as "back-door license"—for every business in this country who uses our Nation's waters. And you said to us to do that consistent with the States and their approaches. You provided money, you provided instructions to us to fully involve that State mechanism, and, in fact, went on to say that it was, in fact, a State responsibility, too.

Because of that, I believe that is consistent and I believe that is the right way to go about it. What I am reporting to you today is that we, for the first time perhaps, are having enough courage to go back and say,

> Two-thirds of the states and three-fourths of the dischargers in the United States, we're not completely satisfied with the performance of what I consider to be the major partner in this undertaking. It's not sufficient to issue a permit anymore. It's not sufficient to delegate a state program anymore. If you don't act, we're going to.

And we're saying three other things, substantially, in this turnaround of this program.

First of all, I think, in that staff report that we presented to you some months ago, we tried to demonstrate graphically that yes, we have made progress. If you look at the Nation's waters in 1972 and 1982, you can see substantial progress. And all of that is good, but at this point——

Mr. LEVITAS. Let me interrupt you right there. It is good; in fact, I have been very impressed with the report and study that ASIWPCA—is that the name?

Mr. RAVAN. Yes, sir.

Mr. **Levitas**. Has put out, which—for the first time, for my benefit—has pulled together in one place a common data base by which we can actually measure the total achievements that had been accomplished. And I would imagine your Agency is relying heavily on that type of thing, but have, yet, had problems.

Mr. **Ravan**. And that therefore, Mr. Chairman, is the reason that I would ask you not to fully interpret my remarks today as just a beginning.

Mr. **Levitas**. OK.

Mr. **Ravan**. I think that is the estimate and documentation of our progress to date. Now it's time, quite honestly, I believe, to shed this dichotomy, this split personality, that EPA sometimes has imaged, and I believe the Agency has taken two major steps toward this. One image is that we're just a big grants maker: "you just come to us for a grant, we'll give you a lot of dollars and see you later." The other image is, we're a cop: "we've got a badge and we've got a job to do." I think we're seeing, now, two things, and therein lies the justification for my statement. One, we decoupled our policeman responsibilities from dollars. We have said now, and we're enforcing, that you're not guaranteed a grant. And regardless of whether or not you received a grant, that's not a bar to enforcement. And second, we are moving substantially—as my statement points out here—to define at what point we will enforce against you regardless of what kind of State—quote "geographic-political subdivision" you're in. And I think our evidence, at least——

Mr. **Levitas**. And that's what you mean by the national norms——

Mr. **Ravan**. Yes. We're saying two things. First of all, "if you're out of compliance for one quarter, we'll know about it; we at headquarters will know about that. If you're out of compliance for the second quarter, we'll enforce against you if, in fact, that State hasn't. And we will, for the first time in this system, have your name and identity." And we are, in fact, causing that timeliness of enforcement action, whereas, perhaps, in the past we haven't done that.

Mr. **Levitas**. Did you want to answer that, Ms. Hanmer?

Ms. **Hanmer**. I was just going to mention, we have been operating off of a basic enforcement management system document since the late 1970's; it came out in 1978. What did not happen at that time was that that document was not made mandatory for the State delegated programs; it was something the EPA regions had to use, but we said it was guidance as far as the States were concerned. And we never had a system in which we went back and said, "Did they do it?" and really tried to follow through and track whether or not they accepted that guidance and were using it. So, it is the link between the updated guidance—which doesn't look all that different from the old guidance—and the fact that it is now nationwide in coverage, not just limited to the EPA regions.

Mr. **Levitas**. And I understand that now, and I appreciate that explanation, because it relates to the next question I was going to ask.

If I understood what you said on page 5, that we just discussed, I like that concept from your Agency a lot better than what I read on page 2, which I take it to be the traditional agency viewpoint. And that could lead now—or, I'm not disagreeing with the words that are used, but I'm talking about it was sort of a psychological block. And that's where it says: "The NPDES program is no longer primarily a Federal program." And you're talking about the delegation.

I've had, for a number of years now, the feeling that once EPA made a delegation, that they said, "It's yours." And that was not—I mean, that may be, structurally, the way it worked up to a point, but it is always a Federal responsibility. We've got the EPA to ensure this program is working, and not only with the backup enforcement authority that you must exercise—or can exercise when appropriate—but the psychological understanding that it's not theirs, at least it's ours, and it's probably mine, you know, is the point that I hope you are saying on page 5, which, to me, reads differently from that statement on page 2.

Would you comment on that now, Mr. Ravan?

Mr. RAVAN. Yes, sir. Thank you.

There are two basic points for your understanding of the past and I think your conclusion might very well be correct. First of all, when we delegated the NPDES program to the State, we had taken the steps that were outlined by Mr. Molinari earlier. That created a feeling or an attitude, again, with EPA: "Well, they're adequate now; they've got the program, let them do their thing." We created, on the other side of the table, an attitude on the part of the States: "It is our program; the law said you were supposed to give us the program. Don't come back to see me." And that was not sufficient.

The other point for your conclusion, which I think is valid, is that the EPA, when it does delegate the NPDES program to the State, it does not, after that time, issue permits in that State. However, that was, I think, perhaps stretched a bit because it seemed to indicate that we would not enforce the permits that were, in fact, issued by the States. We would review their quality and contents, and so forth. And we have had, I think, resistance from the States—the delegated States.

And, quite honestly, I guess the third point is that we had our hands full. We've got, still, 15 States to go, and I'm reporting to you this afternoon that we have clearly transmitted a message, that those misunderstandings are not finished with this.

Mr. LEVITAS. I understand.

Mr. RAVAN. This is unfinished business.

Mr. LEVITAS. These are what the Federal Reserve, or FDIC, or comptroller inspector would say they're on a watch list or—what's another list they've got?

Mr. RAVAN. Upon returning to EPA, I was somewhat surprised to find that, in fact, we had never pulled a program—quote, unquote—and I instituted a review process to try to determine what, if any, was our condition and what should we do about that condition.

There are two changes that the subcommittee should keep in mind—two categories of changes. The first category is where there has been a formal allegation, if I may, by some third party—private citizens group or another State. There are, at the present time at least two, maybe more, where a third party has come to us and said, "Yes, that is the case." There's a second category wherein we, through our own intelligence and review of the programs involved, are finding the problem, whereby we have a watch list. And I like your term, and let me use that for a moment.

Colorado—the State statute is inconsistent with the Clean Water Act in that it allows what we consider to be unauthorized economic variances—economic variances from the water quality standard, conflicts of interest, perhaps, among the issuing permit authority. And I have, in fact, met with the Regional Administrator in that particular case, because it is acute. And I've met with the Colorado State officials involved, and they, I believe, have seen the wisdom of changing their State law. There is a problem there, because when the board or State authority must return to the State legislature, there are questions: one, of time, and the will on the part of the State legislature to correct the problem—but if they don't, that would certainly be a prime case.

A case such as Michigan—the National Wildlife Federation—and this would be the second category—has challenged EPA's approval of the State pretreatment program, alleging inadequate funding and underqualified personnel. The major industry permit backlog in that particular State is also at a high of 111 permits or 70 percent. And that would be a factor, obviously, of lack of performance.

And I would be happy to submit all that we have here, Mr. Chairman, rather than take up all the time now. There are about nine cases on our watch list.

Mr. **Levitas**. All right. I would like for you to submit that list with the annotation, but how about just going down the list of names.

[Information received from Mr. Ravan follows:]

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OCT 17 [illegible]

OFFICE OF
WATER

Honorable Elliott Levitas
Chairman, Subcommittee on Investigations
and Oversight
Committee on Public Works and Transportation
House of Representatives
Washington, D.C. 20515

Dear Mr. Levitas:

When I testified before the Subcommittee on Investigations and Oversight on September 19, we discussed EPA's oversight of approved State NPDES programs. In response to questions from yourself and other Subcommittee members, I identified several States with NPDES programs that are of concern to me and that my staff in the Office of Water is tracking on a regular basis. I promised to provide you additional information on EPA's oversight of approved NPDES States and specific information on each State that I identified, including current EPA activities to resolve our concerns.

Enclosed is the material that you requested. In addition, I have enclosed several lists of States that appear to have some problems or special challenges, based on specified criteria. For example, one of our goals is to substantially eliminate the backlog of expired permits and assure that Best Available Technology Economically Achievable (BAT) limits for toxic pollutant controls are established in renewed permits as expeditiously as possible. States with high percentages of expired permits face an especially significant challenge and workload in the next year or two. I have identified those States for you, as well as the States that have a large number of permits to issue.

As I am sure you can appreciate, it is not easy to evaluate complex State programs without considering many different aspects of program quality, quantitative outputs and environmental results. While I can report to you readily on quantitative outputs as reflected in the enclosed materials, quality and environmental results are more difficult to assess, more subjective and, of course, more open to debate. We are continuing to pursue ways to address all relevant factors in State performance. In the meantime, I hope you will find the enclosed materials helpful and enlightening.

I would like to re-emphasize that high quality State programs are essential to the effective operation of the NPDES program. I expect that our current efforts will improve the quality of these programs with deficiencies. We have not identified any problems with State programs that could not be remedied, given the will of the States themselves. However, we will take all necessary actions to ensure that deficiencies are corrected, up to and including program withdrawal if it should become apparent that only EPA's management of the program will assure proper implementation.

I look forward to working with you in the future. Of course, if you have any questions concerning the enclosed materials, please let me know and we will be happy to provide additional information.

Sincerely,

Jack

Jack E. Ravan
Assistant Administrator for Water

Enclosures

State NPDES Programs

Background

Under the Clean Water Act (CWA), States may request authority to administer the NPDES program in lieu of EPA. The Administrator may approve such a request if it meets the minimal criteria in §§402(b) and 304(i) of the Act, as implemented through the NPDES and pretreatment regulations. Under §402(c), after a State is approved to operate the water permit program, we have a continuing responsibility to oversee the State to ensure the program is operated in full compliance with the CWA.

Over the past 12 years, 37 States and Territories (out of 56) have requested and received approval of State NPDES programs. (Not all of these include the required authority to regulate Federal facilities and administer a pretreatment program since many State programs were approved before the 1977 Clean Water Act Amendments added these provisions. Some States have not updated their programs to reflect the 1977 requirements.) Approved States now issue about three-fourths of the NPDES permits, so that primary administration of the NPDES program rests with the States, not EPA.

Areas of Concern

Because State performance now largely determines the success of the program, it is imperative that States effectively implement the program and have adequate legal authority. EPA reviews State program requests for approval with the view toward ensuring that the State's program meets all legal requirements as a minimum but also promises to be a quality program that will be implemented in a sound manner in years to come. Unfortunately, since their initial approvals, a number of State NPDES permit programs have developed deficiencies, affecting a number of aspects of program quality. These include:

Program Performance - Some State programs have high backlogs of expired permits and/or low permit issuance rates. Program administration has been hampered by inadequate resources and personnel in some States.

Inadequate Legal Authorities - In some States, current statutes and regulations are not in accordance with the Clean Water Act. Of the 37 States approved to administer the basic NPDES program, only 17 have assumed the full program that includes authority to regulate Federal facilities and implement pretreatment programs.

Enforcement - Some States must improve their enforcement programs to address high noncompliance rates. While EPA is ready and willing to take Federal enforcement actions where States fail to act, we expect States to meet their obligations under Federal law to carry out the NPDES program.

These problems do not appear in all State programs. In some cases, minor technical deficiencies exist, but are not cause for serious concern and can be corrected without difficulty. EPA regional offices deal with these kinds of concerns on a continuing routine basis. However, there are some problems that warrant a concerted, specific effort by EPA, including EPA headquarters.

Cause of Deficiencies

The majority of the State programs have been approved for ten or more years, during which time the NPDES program has changed both in emphasis and complexity. The Clean Water Act changes of 1977, which among other things codified the guideline approach to toxic pollutant control, were generally not incorporated specifically into the previously approved State program statutes and regulations through formal program modifications, although States are generally implementing these provisions under existing authorities. In some cases, updating is needed to assure legal sufficiency. The lag in updating legal authorities has also been partially attributed to uncertainty over EPA regulations. Since 1978, when comprehensive changes to the NPDES rules were first proposed and the pretreatment regulations first promulgated, numerous changes to these rules have been proposed. Some States were reluctant to adjust their programs while EPA's regulations were unsettled. A number of States also have been significantly hampered by budget and personnel cuts or reprogramming of resources to other environmental programs. These losses may have left inadequate resources to administer the program and issue permits in some cases. In a very few cases, the State's philosophy or commitment to the goals of the Clean Water Act may have changed since program approval and modifications to the State program, while effective under State law, render the program unapprovable under Federal law. Finally, many States delayed issuing BAT permits until EPA established the applicable effluent guidelines. These standards were originally scheduled for promulgation by 1980; however, EPA did not promulgate most of them until after that date and is still completing promulgation.

Unless States issue effective BAT permits consistent with the 1977 amendments, the control of toxic pollutant discharges is likely to be inadequate or nonexistent. State legal authorities that have not been updated or that are inconsistent with the NPDES and pretreatment regulations may lead to successful permit challenges that jeopardize a State's ability to carry out the program (as has occurred in at least one State) or the inability to fully enforce the program. The failure to obtain pretreatment approval leads to difficulties in fully implementing the program. Finally, States with inadequate resources are not likely to be capable of meeting all program responsibilities.

EPA Oversight

EPA is addressing these State program problems in a number of different ways. In the area of expired permits, EPA is eliminating its own backlog in unapproved States by increasing the resources and attention allocated to permitting. It is important that States with backlogs undertake a comparable effort. To that end, we have obtained commitments from the States to address their backlogs. To help States meet these commitments, the Agency will provide assistance, both through its own personnel and contractors.

EPA has also initiated a comprehensive review of the approved State programs to identify any deficiencies and establish strategies for their correction by affected States. Using objective evaluation criteria, we have identified a number of States that appear to face significant challenges or to be deficient (attached are State rankings for each of these criteria). Much of the ongoing oversight conducted by our regional offices on a day-to-day basis is designed to ensure improvement in these general areas.

Attached are descriptions of those State program problems that EPA headquarters has targeted as requiring special emphasis at present. In addition to tracking progress and providing assistance to our regional office personnel for these States, staff in the EPA headquarters Office of Water is developing a comprehensive review strategy and guidance on State program evaluation. We plan to conduct workshops for regional staff that will participate in the comprehensive reviews and will be discussing our plans in detail with the States.

STATES WITH MORE THAN 75 EXPIRED MAJOR PERMITS

(Source: 8/31/84 PCS, updated to 9/14 by Regional Offices)

	STATE	Majors	Expired
1.	Ohio	337	191
2.	New Jersey	350	180
3.	Illinois	280	151
4.	Michigan	247	141
5.	New York	454	133
6.	Pennsylvania	394	126
7.	California	232	90
8.	Virginia	139	79
9.	Wisconsin	151	78
10.	Connecticut	230	78
11.	Indiana	204	76

STATES WITH MAJOR PERMIT BACKLOG OVER 35%

(Source: 8/31/84 PCS, updated to 9/14 by Regional Offices)

	STATE	Majors	Expired	Percent Expired
1.	Washington	100	58	58%
2.	Virginia	139	79	57%
3.	Virgin Islands	7	4	57%
4.	Michigan	247	141	57%
5.	Ohio	337	191	57%
6.	Illinois	280	151	54%
7.	Wisconsin	151	78	52%
8.	New Jersey	350	180	51%
9.	Nevada	15	6	40%
10.	California	232	90	39%
11.	Indiana	204	76	37%
12.	Maryland	88	32	36%
13.	West Virginia	104	37	36%
14.	Missouri	126	44	35%

STATES SUBJECT TO SUITS OR PETITIONS
(Source: Headquarters and Regional Offices)

1. Virginia - The Environmental Defense Fund filed a petition for withdrawal of the State program with the Administrator. EPA is now investigating the EDF allegations.

2. Michigan - The National Wildlife Federation filed suit challenging EPA's approval of the State pretreatment program. EPA acknowledged error to the Court and is now working with the State to prepare a new submission.

3. Colorado - EPA has been reviewing the Colorado program for several years. By recent letter to the Administrator, the Natural Resources Defense Council indicated its intent to file a petition for withdrawal if the State had not taken adequate action by November 15.

4. Kentucky - EPA approved the program a year ago. In January, a local environmental group filed a notice of their intent to sue raising concerns with the State resources and enforcement program.

5. California - Citizens for a Better Environment filed a 60 day notice of their intent to sue the State for failing to request approval of a State pretreatment program as required by the Act and regulations.

NPDES STATES NOT APPROVED FOR PRETREATMENT OR FEDERAL FACILITIES

No Pretreatment

1. California
2. Colorado
3. Delaware
4. Illinois
5. Indiana
6. Kansas
7. Maryland
8. Montana
9. Nevada
10. New York
11. North Dakota
12. Pennsylvania
13. Virgin Islands
14. Virginia
15. Washington
16. Wyoming

No Federal Facilities

1. Colorado
2. Connecticut
3. Delaware
4. Kansas
5. Maryland
6. North Carolina
7. North Dakota
8. Tennessee
9. Vermont
10. Virgin Islands
11. Washington

Neither Pretreatment nor Federal Facilities

1. Colorado
2. Delaware
3. Kansas
4. Maryland
5. North Dakota
6. Virgin Islands
7. Washington

NOTE: The 1977 Clean Water Act amendments required all State NPDES programs, including approved programs, to include pretreatment programs and authority to regulate Federal facilities.

STATES WITH SIGNIFICANT NONCOMPLIANCE ABOVE NATIONAL AVERAGE

(Source: 2nd Quarter FY 84 Quarterly Noncompliance Reports)

	State	Majors	SNC	Percentage
1.	Virgin Islands	7	4	57%
2.	Pennsylvania	420	112	27%
3.	Missouri	128	34	27%
4.	Hawaii	23	6	26%
5.	Virginia	136	34	25%
6.	Rhode Island*	36	9	25%
7.	Maryland	84	19	23%
8.	Delaware	34	7	21%
9.	South Carolina	198	42	21%
10.	Wyoming	40	8	20%
11.	Tennessee	158	23	18%
12.	Indiana	198	33	17%
13.	California	226	38	17%
14.	Georgia	165	26	16%
15.	Nebraska	58	9	16%
16.	West Virginia	102	16	16%
17.	New York	469	74	16%
18.	New Jersey	369	56	15%

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* Rhode Island was approved 9/17/84

CALIFORNIA

APPROVAL STATUS

NPDES	May 14, 1973
Federal Facilities	May 5, 1978
Pretreatment	No submission to date

MAJOR ISSUES

Legal Authorities

The Citizens for a Better Environment (CBE) filed a notice of intent to sue with the State on May 18, 1984, alleging violations of EPA regulations resulting from the State's failure to seek an approved pretreatment program. The General Pretreatment Regulation requires any NPDES State with a permit program approved prior to December 27, 1977, to request approval of a pretreatment program by March 27, 1979, unless the NPDES State must amend or enact a law, in which case the request must be made by March 27, 1980. The State has not submitted such a request.

OTHER CONCERNS

Permitting

The current backlog of major industrial permits is approximately 44 out of a total of 86 facilities, or 51%. The current backlog of major municipal permits is approximately 46 out of a total of 146 facilities, or 32%. The total backlog of major permits is 90 out of 232, or 39%.

California enacted a substantial revision of its NPDES regulations in 1980 without submitting the changes for EPA review and approval. Such program modifications are required to be submitted under 40 C.F.R. Part 123.

EPA RESPONSE

EPA is continuing efforts to encourage the State to assume responsibility for a pretreatment program. Legislation was enacted on September 29, 1984, requiring the State to submit an application to EPA, by September 1, 1985, for approval of its pretreatment program and providing a supplementary appropriation of $270,000 for implementation. In addition, EPA is negotiating an amendment to the §106 workplan that will lay out a schedule for the State to apply for program approval and will form the basis for transition of authority from EPA to the State.

The Region has worked with California in the §106 grant negotiations process to assure progress toward reducing the permit issuance backlog. The State is committed to eliminating the backlog by December 31, 1984. Draft permits have been completed for all but approximately 10 of the expired permits. In addition, EPA has apprised the State of its concerns over the 1980 changes to the State's NPDES regulations and is working with the State agency to rectify this problem. The State will be submitting these regulations to EPA, in accordance with 40 CFR Part 123, by December 15, 1984. EPA has begun a comprehensive review of the NPDES program that will be completed in FY85.

COLORADO

APPROVAL STATUS

NPDES	March 27, 1975
Federal Facilities	No submission to date
Pretreatment	No submission to date

MAJOR ISSUES

Legal Authorities

There are a number of serious problems with the legal authority for the Colorado permit program stemming from changes in 1981 to the Colorado Water Quality Control Act (i.e., SB-10). The three most serious issues are:

Economic Reasonableness: State law provides for variances from water quality standards, treatment beyond secondary treatment and technology-based standards based on case-specific cost/benefit analysis. This conflicts with Federal law, which provides for economics to be considered in the standards-setting process.

Conflict of Interest: The Colorado Water Quality Control Commission hears certain permit, variance and BPJ determination appeals. Some Commission members are employed by permittees. Since it acts in this appellate role, the Commission is covered by the conflict of interest provision of the Clean Water Act (§304(i)(2)(D)), which provides that no person receiving a significant portion of his income may sit on a State body which rules on permits.

Criminal Penalties: The State is prohibited from taking criminal enforcement actions for violations of permit or control regulations in cases where the State has not yet acted on a permit application or variance request. This is inconsistent with Federal NPDES requirements.

Other Issues: There are a number of other problems with Colorado's authorities (e.g., temporary permits; discharges to ditches and other man-made conveyances).

EPA ACTION

EPA has been negotiating with Colorado over its program deficiencies for several years. Region 8 conducted a permit audit this summer to examine the impact of variances authorized by State law on the State's NPDES program (final results are pending). On August 23, 1984, EPA conducted a public meeting to receive comments from interested persons on these concerns. EPA has asked that Colorado submit a complete package -- regulations, legislative proposals and other necessary initiatives -- to the Agency by November 30, 1984, to address all our concerns. (Note: Subsequently, NRDC notified the Administrator by letter of its intent to petition for withdrawal of Colorado's program if the problems are not resolved by November 15, 1984.)

MICHIGAN

APPROVAL STATUS

NPDES	October 17, 1973
Federal Facilities	December 9, 1978
Pretreatment	June 7, 1983

MAJOR ISSUES

Legal Authorities

EPA has been sued over the approval of the Michigan pretreatment program. The suit, filed by the National Wildlife Federation (NWF), questions EPA's basis for approval of the Michigan program. Specifically, the suit alleges that EPA did not fully consider State organization and that the State has inadequate funding and underqualified personnel. EPA agreed to reconsider its approval of the State pretreatment program and has asked the State for a resubmission of the program. The court has recently ordered that EPA complete its reconsideration by March 27, 1985. As part of its resubmission, the State has agreed to promulgate pretreatment regulations, which the State Attorney General's statement indicates are essential under State law for proper implementation of the pretreatment program. The State had not carried out its earlier commitment to promulgate these rules in FY 83. The absence of regulations has had a negative impact on program implementation, particularly with regard to enforcement.

NWF has threatened to initiate further unspecified legal action.

Permitting

Michigan has a serious backlog of major industrial permits. As of 9/14/84, 67% of the State's major industrial permits had expired and were not yet reissued. Michigan has had trouble issuing permits, and has an average major permit issuance rate of only 13.75% over the past three years. At least part of the cause of the backlog is due to a major reorganization of the agency responsible for NPDES and pretreatment administration. The reorganization has resulted in the centralization of the NPDES permit issuance process, while the pretreatment program has been decentralized. However, it appears that the State is significantly improving its permitting. While the State issued no major industrial permits and only 4 municipal permits in the first quarter of FY 84, Michigan finished the year with a total of 41 major industrial and municipal permits being issued. EPA expects this trend to continue.

The State has been very slow in reviewing and acting on local pretreatment programs submitted for approval in the past. However, there has been notable improvement in this regard, with the State approving 26 local programs by the end of FY 84.

This improvement is in response to new program initiatives instituted by the State with assistance from EPA. The State has recognized the need to make changes in the NPDES program to make it stronger. The changes are being made and it appears that the State is now making progress.

EPA RESPONSE

Region V is working closely with State agency management to resolve performance problems with the State NPDES program, many of which are addressed in the State's FY 85 workplan. The Region has completed an evaluation of Michigan's program in order to ascertain why the NPDES program has been moving so slowly. An action plan to address program deficiencies was developed between EPA and the State and implementation is fully underway. The results are becoming evident by issued permits, pretreatment program approvals, and increased enforcement.

EPA has been working very closely with the State concerning the pretreatment litigation and the development of pretreatment regulations. EPA Headquarters and Region V have commented upon the State's draft regulations, and in August, EPA met with the State to discuss the draft regulations. The Region has regularly discussed the pretreatment program with the State. Further action will occur once the State submits a new set of draft regulations and further revisions to other aspects of the State pretreatment program. The State has agreed to revise its program in accordance with the court ordered schedule requiring EPA to take final action on Michigan's pretreatment program by March 27, 1985.

NEW JERSEY

APPROVAL STATUS

NPDES	April 13, 1982
Federal Facilities	April 13, 1982
Pretreatment	April 13, 1982

MAJOR ISSUES

Permitting

The State major permit backlog has grown to approximately 180 major permits (51%) since program approval 2 1/2 years ago, despite large amounts of contractual assistance from EPA. This is in large part attributable to inadequate State staffing levels. While the State has adequate funding, civil service restrictions have prevented hiring additional staff for the permit program.

EPA RESPONSE

After extensive negotiations, EPA and the New Jersey Department of Environmental Protection have agreed upon a plan in which New Jersey will attempt to use EPA program grant funds under §205(g) to hire a permit writing contractor, the State will increase and make more efficient staff efforts, and EPA will provide direct assistance in writing draft permits. EPA expects that by the end of FY85, all permits expiring before July 1, 1985, will be issued and the remainder expiring after July 1, 1985, and before October 1, 1985, will be drafted and in public notice.

PENNSYLVANIA

APPROVAL STATUS

NPDES	June 30, 1978
Federal Facilities	June 30, 1978
Pretreatment	No submission to date

MAJOR ISSUES

Permitting

The State currently has a major industrial permit backlog of 65%. The State backlog is in part attributable to the State policy of not issuing BPJ permits where a guideline is expected, but rather to wait for the EPA standards. Another reason is inadequate staffing to handle the large number of reissued and new permits. However, the State has just committed to reissue all 256 expired permits during FY 85. To fulfill this commitment, the State will add 34 new positions to its permit issuance staff. The State is also developing a general permit program which could help to eliminate part of the backlog. The State is expected to submit the program to EPA shortly.

Enforcement

The State has high noncompliance numbers in quarterly noncompliance reports (27% significant noncompliance in 2nd quarter).

Legal Authorities

The State has not assumed the pretreatment program at this time, although EPA regulations (40 CFR 403.10(b)) required NPDES States to request program approval by March 27, 1980. Other changes to State authorities to reflect changes in Federal law may be needed but have not been identified.

EPA RESPONSE

EPA discussions with Pennsylvania on September 19, 1984, led to the State's commitment to reissue all expired permits during FY 85. Region III estimates that the State has enough personnel to adequately issue 204 of the 256 backlogged permits (80%). Based upon the State's commitment to eliminate the backlog, EPA has agreed to release $106 funding for FY 85 to the State to assist in its permitting efforts. The Region plans to dispense these funds on a quarterly basis contingent on the State reissuing backlogged permits.

EPA plans to undertake a comprehensive review of NPDES legal authorities and program performance during FY 85. EPA will also review the State's enforcement activities.

TENNESSEE

APPROVAL STATUS

NPDES	December 28, 1977
Pretreatment	August 10, 1983
Federal Facilities	No submission to date

MAJOR ISSUES

Permitting

NPDES and Surface Mining: Until recently, the Tennessee Division of Surface Mining (DSM), in cooperation with the Tennessee Division of Water Management (DWM), conducted compliance monitoring and inspections and drafted NPDES permits for coal-related dischargers. The DSM did most of the preliminary permit issuance work, although the actual permit issuance was done by the DWM. Recently, however, the U.S. Department of the Interior withdrew DSM's authority over the Federal portion of the surface mining program. The Tennessee Division of Surface Mining still retains authority to administer the State portion, although, as a result of the withdrawal of the Federal program, the DSM has suffered reductions in staff and resources.

The current State plan is for the DSM to continue to do the inspection for the NPDES program, as well as provide "special support" in engineering, enforcement, and planning review. The Tennessee Division of Water Management will assume all permitting functions. DWM has asked for an increase of 5 staff positions to handle the additional work.

Pretreatment: The State has been very slow in reviewing and acting on local pretreatment programs which require State approval. At the beginning of FY 84, the State informally committed to the approval of 20-22 local programs. At mid-year, there had been no approvals. The State met with the EPA Regional Administrator at that time, and it was determined that 17 approvals in FY 84 would be a reasonable adjusted target. At the end of the FY 84, the State had approved 4 local pretreatment programs.

Enforcement: A cumbersome enforcement mechanism requires the Tennessee Water Quality Control Board to review and sign every enforcement action, which severely limits the number of enforcement actions that can be handled. Unlike EPA's authority under the CWA, issuance of administrative orders cannot be accomplished in a matter of days but rather takes weeks or months, which undermines the effectiveness and credibility of the enforcement program. It may take State legislation to rectify this problem.

Identified in both the FY 84 mid-year report and the FY 83 report is the routine practice on the part of the Water Quality Control Board of reducing civil penalties assessed by the Commissioner of the Department of Public Health against violators. This seriously reduces the deterrent effect of such penalties and undermines enforcement efforts.

Legal Authorities: Although the State agreed to promulgate pretreatment regulations at the time of program approval, it has not yet drafted these rules.

EPA RESPONSE

A thorough examination of the Tennessee pretreatment program was recently conducted by an EPA contractor, confirming problems with the State's approving local programs. The Region also recently completed a file audit that may provide further insight into the problems and possible remedies for Tennessee's program. The Region has also continued to urge the State to meet its commitment on local program approvals.

With regard to lack of adequate enforcement, the Region has suggested to the State that authority to issue enforcement orders that do not assess penalties be delegated by the Board, e.g. to the Division Director. Region IV met with Tennessee in August 1984 and raised the issue of the Board's practice of penalty reduction. The State made assurances that it would curtail this practice. The Region is keeping a close watch on State enforcement activity to determine whether or not the State will adhere to its agreement and will adopt a policy of upholding penalties assessed by the Commissioner.

KENTUCKY

APPROVAL STATUS

NPDES	September 30, 1983
Federal Facilities	September 30, 1983
Pretreatment	September 30, 1983

Because of concerns raised during the approval process, it was provided that EPA would conduct a formal audit of the Kentucky program after one year of State administration, at which time public comments would also be solicited.

MAJOR ISSUES

Legal Authorities

EPA reviewed Kentucky's legal authorities during the approval process and found them to be adequate. There is no indication that this has changed since that time.

Program Performance

A local environmental group has issued a notice of intent to sue for program withdrawal over cuts in the budget for oil and gas regulation proposed within the State Agency because of concerns about effects these cuts may have on enforcement of oil and gas permits and the NPDES program in general. These resources were deleted prior to submission of the final budget.

EPA RESPONSE

In accordance with its commitments at the time of approval, EPA will shortly be conducting a comprehensive review of the Kentucky program. An audit will be conducted in early October followed by a full analysis of the results by the end of the month and a draft report by early November. A public hearing is tentatively scheduled for December 13, 1984. EPA will coordinate its review with all concerned parties.

CONNECTICUT

APPROVAL STATUS

NPDES	September 26, 1973
Pretreatment	June 13, 1981
Federal Facilities	No submission received

MAJOR ISSUES

Legal Authorities

Connecticut lacks validly promulgated NPDES regulations. Since the Connecticut program was approved in 1973, the program has been operating under State "directives" in lieu of regulations. State court decisions affecting the use of "directives" in other programs indicate that these "directives" are not validly promulgated regulations under State law. This lack of regulations has become a serious problem, as dischargers have challenged the validity of permits issued under the "directives." EPA repeatedly requested, over several years, that the State make the necessary corrections to its program by promulgating regulations, and the State has recently begun to develop the necessary regulations.

OTHER CONCERNS

Permitting

Connecticut has a large permit backlog. As of 9/14/84, 47% of Connecticut's industrial majors had expired. The State is making increased efforts to get permits out, and several majors are reportedly in the process of being publicly noticed. The permitting process has been delayed in part by the anticipated promulgation of regulations. Permit issuance in the State is a cyclical activity, which now appears to be reaching the high point of its cycle. The cyclical nature of Connecticut's permit process means that some permit writers are transferred to other duties during low points in the permitting cycle. Once these permit writers return to the NPDES program, there are some delays as they re-familiarize themselves with the program. The State has committed to issue 60 of the 64 municipal permits and 40 of the 60 industrial permits expiring in FY 85.

EPA RESPONSE

EPA staff expect to meet with State officials in October to review the status of the Connecticut program, including the development of regulations and the State's permit backlog. With regard to the development of regulations, EPA has recently received a partially complete set of draft regulations, and expects to receive a complete set in the very near future for review. The State expects to have the final regulations in place by April 1985.

VIRGINIA

APPROVAL STATUS

NPDES	March 31, 1975
Federal Facilities	Feburary 9, 1982
Pretreatment	No submission to date

MAJOR ISSUES

On August 27, 1984, EPA received a petition from the Environmental Defense Fund (EDF) to review the Virginia program and withdraw it should the Administrator determine it to be deficient. The petition alleged inadequate program performance in several areas:

Permitting

The current backlog of major industrial permits is approximately 54 out of a total of 75 facilities, or 72%. The current backlog of major municipal permits is approximately 25 out of a total of 64 facilities, or 39%. The total backlog of major permits is 79 out of 139, or 57%. EDF asserted that the State has abused the power to administratively continue expired permits thereby prohibiting public involement in the NPDES process. According to EDF, the State also has been slow to develop permits containing best achievable control technology (BAT) limitations on a best professional judgment (BPJ) basis, preferring instead to wait until EPA promulgates national effluent limitation guidelines.

Enforcement

According to the preliminary results of a recent EPA regional audit, the State sometimes negotiates future compliance rather than pursuing a civil action for past violations, even where facilities continue to violate permit limitations. EPA is concerned that Virginia may not inspect all major facilities on an annual basis. The audit also indicates that violations reported on discharge monitoring reports (DMRs) are not always followed up. EDF alleges that permits have been modified without undergoing public notice and comment, compromising threatened EPA enforcement actions.

Legal Authorities

EDF alleges that the State's legal authorities are no longer adequate to operate the NPDES program because State law restricts the applicability of §301 effluent limitations to municipalities who receive grant money to construct or upgrade a treatment facility. According to EDF, the Virginia Supreme Court also has limited the State's imposition of water-quality standards to those standards which can be achieved by current technology. The State NPDES regulations were updated in 1981, including the addition of provisions for general permits. Although Virginia has not formally requested EPA approval of these modifications, EPA is now reviewing them as potential modifications in the context of responding to the EDF petition.

EPA RESPONSES

EPA is conducting an informal investigation into the Virginia program before the Administrator makes a decision on the EDF petition. EPA and the State discussed the EDF petition on October 2 and will work with the State to respond and provide documentation regarding the allegations made by EDF. Once the necessary information has been collected and assessed, the Administrator will formally respond to the petition.

Mr. **Ravan**. Yes, sir. Connecticut is a case in point. The State lacks promulgated NPDES regulations implementing the program—primary concern there.

Kentucky——

Mr. **Levitas**. You can just list the names, and then give us for the record.

Mr. **Ravan**. All right, sir. Kentucky, New Jersey, Pennsylvania, Tennessee, Virginia, and California.

Mr. **Levitas**. All right. Now, let's assume for the moment that you do pull back the authority from one or more of those States because they are not doing what needs to be done to make this program work properly. Does EPA have the resources of its own to take over these responsibilities if you did pull them back?

Mr. **Ravan**. This afternoon? No, sir.

Mrs. **Johnson**. Mr. Chairman.

Mr. **Levitas**. Yes.

Mrs. **Johnson**. I'm really stunned to hear Connecticut on that list. I'm genuinely stunned. I can tell you that according to Connecticut businessmen that lack of resources to enforce the program in Rhode Island and Massachusetts is costing us jobs. If we're on that list it may well be because you're not doing the job in Massachusetts and Rhode Island. We in Connecticut are being underbid as much as 25 percent on some of our contracts in the metal-finishing area. I'm interested that you don't have resources to take it over. I know that Massachusetts doesn't run their program and I don't believe Rhode Island does at this time.

Ms. **Hanmer**. They were approved on Monday.

Mrs. **Johnson**. OK. [Laughter.]

Mr. **Levitas**. No, I think it's important to get to this, because I know EPA does not have the resources—I mean, I know that and you know that—and that would have to be done.

I have wondered—and you may not know the answer to this, and it might simply be speculative in any event—if maybe one of the reasons there has not been the retraction of authority in some cases up to this point, where a State-run program was being done very poorly, was the awareness at EPA that they didn't have the resources. Has this, in fact, been one of the reasons that people have been reluctant to withdraw the authority rather than to just let things run along? You may not know the answer.

Mr. **Ravan**. I would be happy to comment, Mr. Chairman, that an analyst, in terms of dollars and people, could very well add more light to just that particular narrow band of interest; that is to say, that's a factor.

Mr. **Levitas**. Yes.

Mr. **Ravan**. However, I think, in my opinion for which I am responsible, it is the lack of will, wherein EPA has given over to the State the NPDES program responsibilities, and, quite honestly, has tried to give that State ample opportunity, over time. And one must not be quick to judge a State's performance just in 1 year, especially the first year, perhaps not even in the third year. But in the 5-year increment of trying to deal with that program, trying to reinforce them with 106 assistance—State grants, dollar support, technical assistance, legal assistance, et cetera—one could, I think, adequately evaluate that State program and come to a proper and just conclusion that either they are or are not adequate to the task.

Mr. **Levitas**. But you, as Assistant Administrator, would have no hesitancy if you felt that a State was not running its program adequately, both to recommend withdrawal and go to the Administrator and to OMB and say, "In order for us to be credible in doing this, that we've got to have the resources to carry it out"?

Mr. **Ravan**. Yes, sir. Let me even comment further. It is not bravado on my part. You know as well as any member of this subcommittee the scar tissue that's already on my back for having tried to be a just and fair environmental manager of an eight-State region.

I just violated one of the cardinal rules, and I think you and I both know that. But I did it because I want to be candid with you. You asked for the list and I gave it to you. And it is only—underline "only"—a watch list.

One of the cardinal rules of getting along with the States as a group and as individuals, is not to do things like this; and it is difficult. But let me point out to the subcommittee, Assistant Administrators for Water are like second lieutenants in World War II; and I think you understand what I mean by that. But as long as I'm the Assistant Administrator, I've made it very clear to my staff. First of all—and I instituted this program because of that—if we do not see adequate performance, just, fair evaluation, we will pull those programs. I've made that very clear to the regional Water Division Directors who work daily with the States. And I know I've made it clear to the ASIWPCA organization. And, in fact, some of the ASIWPCA organization member States support a toughness on the part of EPA so that they have a credibility, which is just as important as our credibility.

So, yes, sir, we are embarked on this course and it's going to be tough. And I expect tomorrow that I'll receive several letters and phone calls about what I just said, but that's the nature of the business.

Mr. **Levitas**. I understand that. But I think that what you have said, what you have done, and why I want this as a matter of record, is to make it clear that we're not going to be doing business as usual. Next time we talk about this, I don't want a chart that looks like that.

Mr. **Ravan**. I don't, either.

Mr. **Levitas**. And the only way we're going to get that is to be not just tough but to be up front.

Let me just ask this last question.

Ms. Price, getting back to that GAO chart, and leaving aside what criteria gives somebody a black mark, or a red mark, or a blue mark, do you think that if the enforcement program were working as effectively as it was intended to work, the enforcement of the program, that those black, red, and blue marks would be at the same frequency as we have seen them presented by GAO today?

Ms. **Price**. Well, let me answer it this way. I think that if the enforcement program—enforcement credibility—of the agency improves, that the rate of noncompliance should go down.

Now, the reason I answered it that way rather than—because I, too, have not had a chance to study that report, and I'm not real sure what some of those mean; I mean, the context in which they are up there. So, with that particular chart change, I don't know; but I don't think that, you know, that compliance—that if that represents a compliance rate someplace, that, you know, as we are more effective it should go down or not increase. It shouldn't increase.

Mr. Levitas. I think you have answered the question fairly. And the point I make is, I don't think it makes any difference what criteria you use to get compliance ratings up there. Because if you had used a more stringent system, you would have had more marks; if you had used a less stringent system, you would have had less marks. You use theirs, you get what they use, or whatever it is.

If your system of enforcement is working as it should work, whatever your base—I think you've answered the question--it would reduce the number of noncompliance——

Ms. Price. Let me carry this just a little bit—what I can say with more certainty. Again, the levels of noncompliance, it all depends on sort of how you characterize it. I don't know that, literally, a percentage number would come down, but let me say this to you very candidly. I think there are ways to improve what we are doing in terms of enforcement, if that's the thrust of the question. And I think there have been some improvements in the immediate past and I think there will be some in the future.

So, can we do a better job enforcing? Yes.

Now, again, how that will affect a percentage number, I don't know; but I think we're on the right track. But there remains work to be done.

Mr. Levitas. There remains a relationship between enforcement and compliance.

Ms. Price. Yes. I'm just saying, in terms of absolute numbers. Again, if you are depending upon how you—what your definition of "noncompliance" is, the actual number could go up or down; but I think we can do a better job.

Mr. Levitas. Mr. Molinari.

Mr. Molinari. Thank you, Mr. Chairman.

I must say that the last 10 or 15 minutes of the hearing has completely reversed the scope of the testimony of the entire day; and I must, necessarily, express my disappointment at the direction in which the hearing has now gone.

Mr. Ravan, I asked you the question before, whether any State had its delegation authority withdrawn. Your simple answer was, "No." I should have pursued that question with another question, asking, as Mr. Levitas did, whether there was any pending, potential States that were being watched; and I didn't. Frankly, I would have expected when I asked the question, were there any States that had lost their delegation authority that you would have said, "No, but we are watching some States." I think that would have been a more candid answer to my question.

Now, I have a serious problem with credibility. Not just with yourself, or with EPA, but with the information that we received yesterday from region II, because I learned that New Jersey is on this list. Mr. Ziegler, a member of my staff, was in on the conference call, and we had a very lengthy conversation with region II, talking primarily about New York and New Jersey. We got a very glowing report on New York and how tough they were, and that, indeed, they were doing well and were made a State model.

However, we talked about New Jersey. We said, "Well, what about New Jersey?"

"Well, it's not quite as tough." Given the answer, "Not quite as tough;" I had no idea that the problem there was more serious than "not as tough as New York" as the model.

When you look at your testimony on page 2, you say: ". . . the theme of my prepared remarks is simply this: the NPDES program is no longer primarily a Federal program." So, your testimony indicated that we are headed in the direction where the primary authority is going to be turned over to all States when they are in a position to handle the program. Now we're learning that they may not be headed that way but may be headed back in the opposite direction, and that some of these States, if they don't get their act in order, are going to find themselves relieved of that authority that has been previously delegated. That disturbs me, because it's not in accord with the testimony we've heard before today nor with the conversation, the lengthy conversation, that we had with region II yesterday.

Now, this comes as a complete surprise to me. I don't know why we weren't simply told earlier when it was discussed, or why it wasn't alluded to in some way. We would like to have had a more balanced statement from you indicating not just the successes but perhaps some of the failures of the program so that we have a better picture and not just a rosy report.

I wish you'd comment upon what I've had to say. Maybe I'm mistaken in some of the statements that I've just made. I see a much different picture here in the last 10 or 15 minutes than I got from your statement and testimony.

Mr. **Ravan**. Mr. Molinari, I appreciate your statement. Let me, first, apologize for any indication of lack of candor on my part. Actually, I'm trying just the opposite—as I admitted to the chairman.

Mr. **Molinari**. Let me interrupt you. You know, with due respect to you, you may have violated policy or whatever by divulging those names. But recognize one thing, that had you not given that information to the subcommittee, and had we read it a month or 2 months down the line that delegation to a particular State or States was pulled, can you imagine the impact it would have upon this subcommittee after hearing what we heard today? I say this with respect for the candor on your part that it was something that you had to relate to us, because if you didn't, you'd be derelict in your duty not to divulge that information to the subcommittee.

Mr. **Ravan**. Mr. Molinari, that is the way that I feel. That is my attitude and it always will be. And I think Mr. Ruckelshaus has made that clear to all the Assistant Administrators and all persons testifying, that absolute candor is not only his policy but is his mandate.

Having done so, as I said, I have just two general comments about the tenor of your remarks, and then Ms. Hanmer would like to provide you some specifics to help identify the difference between what you may have heard in that telephone conversation and today's action.

One is that, as I tried to indicate, I am, in a sense, a little bit of a watchdog for the entire national program. And whereas a Regional Administrator may have perhaps two States to watch over, or may have six States, that Regional administrator is not, necessarily, given to comparisons other than within his own region, and probably tries to keep those confidential to himself and or, where necessary, as happened here today.

Therefore, my evaluation of a region 2 State, by comparison with the Nation, may, indeed, have a better foundation or a different foundation for comparison. And second, my watch list may be nothing more than my watch list. It's not the regional watch list or something that could equate to that. However, I will, as I indicated, provide you the basis for which I name those particular States.

And the second thing that I do want to indicate is that perhaps I should have gone a bit further and let you know. But, from my point of view, this should not condemn, quite honestly, what I've tried to get across to the subcommittee. There is a population of States, and 36 or so are marginal, and their approvals date all the way back to 1973. In many cases, much has happened, obviously, in those 11 years. It may not be, necessarily, a tremendous fault on the part of the State, but a lack of focused opportunity on the part of the State legislature to correct what we now see as a deficiency in that State program.

And this is remedial in nature. There are two, in fact, lines that I could develop for you. One is the one that I tried to lay out, making progress toward delegation which I think is my responsibility. The second is a remedial action line that probably has some ups and downs in it, and I think now is going to become more intense.

My hope, obviously—the desire is not to pull the program back. The desire is to cause the State in these particular instances to take a remedial action that gives it an opportunity to maintain the program. So, I wouldn't want the subcommittee to go away with the indication that I'm out there trying to pull some States. I'm not I'm trying to get them to take remedial steps.

Ms. Hanmer.

Ms. **Hanmer**. I wanted to say that we will be providing the subcommittee copies of all of our regional evaluation reports, which will lay out in some detail exactly what problems we found in what States and in what regions. It's in a summary fashion, but you will receive all of that material.

The situations in New Jersey and Connecticut are both very remediable. In Connecticut, the situation is that the State never developed formal regulations for issuing permits. This was an issue we discussed with them as far back as when I was in the Boston region in the late 1970's. The State felt it did not need permit regulations. Most recently, however, some of its permittees have begun to challenge their permits, based on this lack of formal regulations.

The State, then, in this year got some statutory changes through the legislature already and is drafting regulations. The region has portions of the regulations that they have already reviewed. So, we are hoping that as long as Connecticut moves forward with the development of those regulations, that we will be able to remedy the situation. We asked for a formal schedule for that. I don't believe we have a formal schedule. I met with Connecticut officials personally to make certain requests.

But I do think we are making progress, at least, that is satisfactory to the regional office. We've put them on a watch list from the Washington level because of the fact that we didn't have a firm, hard schedule for those regulations. And it is, from our standpoint, a legal or a regulatory problem that needs to be solved in that State.

The problem in New Jersey is that they have exceptionally fine regulations and a very complicated system. They received delegation only very recently, and the system has not begun to produce industrial permits that they need to produce for a State of that nature.

I also met with the officials from New Jersey when we were there for our New York regional office visit. New Jersey has concluded an agreement with the New York regional office in which they have promised, in fiscal year 1985, to substantially alleviate their permit backlog. And as long as they are able to do this, they will be in OK shape.

They are on our watch list because we have, right now, provided them a great deal of contractor assistance. We still see very little in the way of final, issued permits to show for it. So, we felt that it bore watching from the headquarters level. The region is, I think you would have to say, more comfortable than we are at this point. They feel that New Jersey will, unquestionably, do the job. As I said, we're still watching.

There are about a dozen other States we didn't name that have problems, either backlog problems or performance problems of one nature or another, which will also be included in our regional evaluation reports.

Mr. Molinari. Now, let me ask a followup question, so that I am not guilty of failing to followup as I was earlier today.

You've indicated two out of the eight are remediable. Do I infer from that that some of the other remaining six may not be remediable?

Ms. Hanmer. From our perspective anything that an agency can do within its own statutory authority is a much easier situation for us to work with than when the problem is a statutory authority problem and they have to go back to their legislature. So that the Colorado situation, which may involve a change they have to make to their statute, would be a more serious issue for us than administrative problems, personnel problems, skill mix problems, or performance problems, that could be corrected within the administrative authority of the State agency.

Mr. Molinari. Do I assume from that that Colorado represents, perhaps, the most serious problem of the eight States that we have identified?

Ms. Hanmer. Probably, in terms of the statutory issue, yes.

Mr. Molinari. Let's put the statutory issue aside.

Ms. Hanmer. There are several different ways you could look at it. Legal and regulatory authority is one set of criteria. Permit backlog or performance is another set of criteria. Colorado—the issue with Colorado is the statutory and legal issue. The statute has resulted in some questionable permits, but by and large they're not one of the most serious States as far as permit backlog. We have very large permit backlogs in States such as Michigan, which is, I'd say, one of the areas where the performance is being most closely watched. We have other cases like that.

We can provide that information to the committee. We're getting deeper and deeper into naming names.

Mr. MOLINARI. That is something we need to know, so that we have an assessment of what is the real problem out there. I think it's a little different than what I had envisioned earlier today.

Ms. HANMER. I'd liken it in nature to a whip. When you crack the whip, the message reaches fastest the part of the whip that is the closest to the hand. The State EPA had a serious backlog problem that you know of, in part because we were waiting for the EPA effluent guidelines to be developed. We've got most of the guidelines now on the street. The EPA regional offices can respond to this new information, and are responding to it somewhat faster than the States who are gearing up now to do BAT permits—best available treatment permits, based on the guidelines.

So we, as a generic matter, have a much larger State backlog problem at this point in time than we do EPA backlog problem. We are working very hard in the fiscal year 1985 grant negotiations to get the States to make affirmative commitments to eliminate at least 60 percent of that backlog. But their backlog problem will probably extend into fiscal year 1986, whereas we will have completed ours by the end of fiscal year 1985.

In terms of enforcement, in general we have found that most of the States do not move to formal enforcement as quickly as our guidelines indicated. As you will see in the date our experiment this year with fixed list indicated that, of the 290 administrative enforcement actions that were issued in approved States, 107 of them were issued by EPA. That is a timeliness problem.

We are now correcting that, I think, with agreements. I have not heard a single region say that it was having an overwhelming difficulty negotiating these new agreements with its States. On the contrary, I think they're coming along pretty well and that most of the States are responding to this, and that the publicity and the oversight that this committee has given to this program this year, I think, has greatly aided that effort.

Mr. MOLINARI. Let me just ask this last question.

In the main you rely upon the monitoring data that is furnished to you by the discharger or permittee. If the information is not true and accurate, how would you find out? How do you know if an industrial permittee, for example, is playing with figures.

Ms. HANMER. We might learn from complaints that someone has seen something, or smelled something, or has seen a fish kill. And our inspection would go into the plant that doesn't report that.

Our routine mechanism is to do compliance evaluation inspections or some other form of inspection of major dischargers once a year. And in those——

Mr. MOLINARI. You inspect once a year?

Ms. HANMER. A year.

Mr. MOLINARI. Are you talking about sampling or lab testing?

Ms. HANMER. We do not do sampling inspections at all facilities. Most of these are going in with an inspector, who goes through the books, who observes the plant, who observes the plant management. And only in a minority of cases at this point are we doing a compliance sampling inspection. We're not able to do those at all majors every year nor are the States.

Mr. **MOLINARI.** Let me just close by saying this to you. Having been a State legislator, I've lived the situation out where the State department of environmental conservation has been quite lax in stepping on some of the local governments when they are not in conformance even with consent decrees. The local governments, like the State of New York, will invariably take advantage of that situation. So that, looking down the road, I am wondering what the impact of that is going to be upon the implementation of the Clean Water Act, and whether the States might be less prone to take some punitive action against municipal government or local government than a Federal agency like EPA would.

I would certainly welcome anybody's comment on that.

I can quote you chapter and verse of so many serious violations. The State has stood by and there have been serious health problems. The State of New York has been a responsible party, and the State just looks the other way because, perhaps, the money that is involved might be substantial. Also, the city of New York is a pretty large entity as opposed to the State. It is half the population of the State, so there's a lot of power down there.

But I am concerned that we might find, in some States, a reluctance to act against local governments, whereas EPA would not be so inclined. EPA is somewhat distantly removed here in Washington from local government, and they don't have political ties within the State. That is a consideration that we have to think about.

Mr. **RAVAN.** Mr. Molinari, let me make three quick comments if I may.

One, the change I identified in the testimony is so significant to your particular point with regard to major municipal dischargers. At the same time, we admit that we're not there on minors just yet. We are, in fact, including in that majors list, for review and appropriate action, minor municipal dischargers who have, in fact, received a grant under the provisions of 92–500, i.e. the law after 1972. Therefore, that's a universe of dischargers somewhat larger than, quote, major dischargers in the municipal category.

We are being now driven by this new guidance and rule for the regions and the States and if we are saying that discharger comes up the first quarter under the appropriate definition of "significant noncompliance," and you don't do anything by the second quarter, we will. Therein lies an incentive for the States now to do what they should do with regard to their political subdivisions. And I think your characterization is totally accurate.

The second point is, in fact, that timeliness: they must deal with violations within an appropriate amount of time. And they must deal with it with an appropriate enforcement action, not just a slap on the wrist.

And the third point, obviously, is a decoupling of municipal activity from, quote, "grant mechanisms."

And, Mr. Molinari, if I may, let me take one other step with you, because your remarks have increased my desire to be completely candid. And your remark about reading things in the newspapers drives this comment.

When a particular group, in this case—let me check my notes—the Environmental Defense Fund—requested of the Administrator a petition that EPA review and perhaps pull the State of Virginia's NPDES program, there was, in fact, a fairly lengthy article in the Washington Post, and it did, in fact, identify some of the material that I've made available to you here. Therefore, you may, in fact, see in the newspapers in days ahead two States mentioned: the first one being Virginia, as I have identified, and Michigan. To that extent, I do not have complete ability to predict what may happen; because, in the case of Michigan, the National Wildlife Federation, has come to us with a similar request. That, under the regulation, kicks off a series of events that the Administrator and I must now take. And that is all very public, and you may, indeed, read about that in the newspaper.

Mr. MOLINARI. I have no further questions, Mr. Chairman.

Mr. LEVITAS. Thank you.

Mr. Wise.

Mrs. JOHNSON. Excuse me. Are you going to go into detail?

Mr. WISE. For about 5 minutes.

Mrs. JOHNSON. I just have one other comment.

Mr. WISE. All right.

Mrs. JOHNSON. You talked about the oversight program you are implementing in the States, where the authority has been delegated. Have you pursued any kind of similar oversight effort of those States where the program is handled by EPA that might smack of any independence?

Ms. HANMER. Yes.

Mr. RAVAN. Yes. I can let Ms. Hanmer provide some of the details, but we, in fact, landed there first—if I may use the term—because that is, in fact, our direct responsibility, and it is handled by the regional office.

Mrs. JOHNSON. I won't pursue this now, because I think my colleague, Mr. Wise, has waited long enough. But I did want to just make that point. At some point I would like to talk with you at more length about your oversight of EPA handled programs in the States, because that has been a source of great contention and difficulty in the Northeast. Thank you.

Mr. LEVITAS. Mr. Wise.

Mr. WISE. Coming out of this series of hearings, Mr. Chairman, of course not only the broad issue, nationwide issue, which we've been pressing today, but also specific problems. And this subcommittee has been very patient and very helpful to me in identifying some of the problems that we have had in our district, the Third Congressional District of West Virginia, which I want to thank you, and Mr. Molinari, and other members of the subcommittee, especially, for spending the time.

You charged me, and, I believe, the EPA, during a hearing recently dealing with the Elk Pinch Public Service and the Malden Public Service District, for an update. And I just wanted to report to you that the Elk Pinch Public Service District has resumed construction; that the EPA, while taking what I thought was a bit of a hard line during the hearing, in that they would not contribute to funding a deficit which I felt they might have helped create a little bit, the EPA did go back and reevaluate and did release the last $825,000 that was coming to the project last week, and that at least for 90 days the Elk Pinch Public Service District is out of the woods and, hopefully, will become operational.

I wanted to express to Mr. Ravan my appreciation for the willingness not only of yourself but the region to go back, and to look at that project, and to be willing to work with us. I think we've all become sensitized to some of the problems of rural construction grants projects. And, so, I did want to thank you and to thank the people in region 3.

I'm afraid the State put it through some unnecessary traumatics in the last day before there was going to be a foreclosure and defaulting into receivership. But at any rate, for 90 days I believe we're out of the woods, and I want to thank you for that.

I believe you had indicated there was something you wanted to put on the record concerning those projects.

Mr. **Ravan**. Thank you, Mr. Wise. Yes.

I would also echo those comments, Mr. Chairman. I believe your subcommittee's activity in those two cases not only identified the category that we have to be alert to but also obviously gave us an opportunity to show some courage. And I think the results of that are exemplary, even though those two grants are plagued with a history of somewhat lackluster performance.

Mr. Wise, I am happy to report today that I show a balance in the Elk Pinch project of some $587,000; which, I'm happy to report, Mr. Chairman, we'll be happy to pay upon receipt of proper billing.

Mr. **Wise**. Let me check my pockets; I may have them right here, Mr. Chairman. [Laughter.]

Mr. **Ravan**. And on the other subject, Mr. Chairman, the project known as Malden, there has been a need for some legal review of that project. And I think the local permittee in that particular case has initiated a series of events that we ought to participate in. And now the State has agreed to pass that request to us under some special provisions of the act. And I believe that we will be able to participate in legal assistance to that project, and I'm very happy about that progress. Thank you.

Mr. **Wise**. I want to just say—I want to thank you, Mr. Ravan, and I would also appreciate it if you would communicate that to Mr. Eichler and the region 3 people. As I say, I think we've had a rocky road at times and some tough communications with each other, but I appreciate the particular attention that Mr. Eichler, himself, gave it.

Once again, Mr. Chairman, I would like to say that Elk Pinch—your staff have been incredible working on this, and if I could ask the subcommittee to keep Elk Pinch under its purview. But as I say, at this point it's moving along and we greatly appreciate your help. Thank you.

Mr. **Levitas**. First, I want to say that your constituents, ought to be grateful to you for the persistence with which you have pursued this matter. I think it really is commendable. We will continue to keep our eye on it. It will be placed on our watch list.

Mr. **Wise**. Thank you.

Mr. LEVITAS. We will, of course, share with you any information and hope that you will do likewise.

Mrs. Johnson, did you have any other questions you wanted answered?

Mrs. JOHNSON. No.

Mr. LEVITAS. I have just one, I think, last question.

On page 6 of your testimony, Mr. Ravan, where you are talking about the 97-percent success rate, with respect to what originally was 1,100 major noncompliance dischargers, and you say that 998 of the original will be returned to compliance or under a formal enforcement action.

What I would like to know is, how many will be returned to compliance and within what time frame? And how many are under—will be under formal enforcement action and by what date do we expect those enforcement actions to have been commenced?

Mr. RAVAN. Mr. Chairman, return to compliance of that—my testimony showed 1,100, but I want to correct that as I did a moment ago. That's 1,024—which was a more thorough analysis when I got back to the office. Returned to compliance, 527, approximately 50 percent of that universe. And then addressed by an enforcement action, meaning a notice of violation, administrative order or judicial referral, 471. That leaves us with 25 problem cases, if I may, that will require some action after October 1. What I just said——

Mr. LEVITAS. But the rest of this will be done by October 1?

Mr. RAVAN. Yes, sir.

Now, I might point out, we've spent a lot of time in NPDES States. I want to give them full credit for their participation, their contribution to that effort, which I think is very, very good and commendable. They contributed, in return to compliance, 396; addressed with enforcement action, 293 of the totals that I gave you.

We did, in fact, help the States in 107 of those actions.

Mr. LEVITAS. That reminds me of another question.

You're talking about the State role in this, and, of course, I agree it's critical. I always supported the decentralization that EPA has followed, both in this program, the Cleveland-Wright amendment approach. I think it is good. But there has always been significant support provided to the States in terms of the State portion—program support portion. I have heard that there is some consideration being given at EPA now about reprogramming some of that money from the State programs and putting it into the EDB study that the agency has. I think it's an indemnification fund, and it's being taken out of the hides of the States.

Is there any truth to that? And if it is, where does it stand and how do you feel about it?

Mr. RAVAN. Mr. Levitas, there is truth in that summary statement, without the actual breakout of numbers. And that has already, in fact, been made available. That is, in fact, the procedure that we should follow and have in this case. The Congress has not approved that redistribution of that $16.5 million, but we have come over to both Appropriation Committees, House and Senate, and asked for that consideration. The redistribution is, in fact, caused primarily by the need to put moneys into the indemnification, because we pulled the authorization for EDB.

Mr. **Levitas**. Well, I've asked our staff to take a look at that before we make any representation to the Appropriations Committee, to find out just what impact that might have on the ability of the States to carry out their function. Because what it ends up meaning is that it's an indirect tax, I suppose, on the States in the sense that they're going to have to make up those funds. And maybe we ought to find another way to provide the necessary resources for the indemnification programs. That I'm not getting into, that subject, this afternoon.

I want to thank all of you who participated this afternoon in the hearing.

Yes, sir. You have another comment you wanted to make?

Mr. **Ravan**. Mr. Chairman, with the indulgence of the subcommittee, may I just put something into the record that I think really needs to be commented on?

I know you, personally, and Mr. Molinari both have brought this to my attention on other occasions. I would like to, for the record, identify the professional employees of the Environmental Protection Agency, both at headquarters and the regional level, as being a group of employees that—Ms. Price and I, obviously, are political appointees, we'll come and go with our term. But these other people, such as Ms. Hanmer who is here with me today, and others who have appeared before you, have been totally dedicated. And we've seen performance with these employees who have, in fact, been the subject of much public comment in the last 24 months or so. And I am so encouraged and pleased by the way these "same employees" have turned the situation around. They are the ones who really deserve the credit, and I want to make that a matter of record to you and the subcommittee; not only those involved with this program but especially as they have sensed a renewed, a refreshing breeze, if I may, with regard to the enforcement program. I can't even recount to you now the number of hours, number of expert efforts, that have been given to this subject. And quite honestly, you and others deserve a lot of credit for that.

And Mr. Molinari, if I may, just one last comment: The memoranda that you have identified for us, from Mr. Sutfin and Mr. Knudson of region 6, I'm sure motivationally were the result of some of this. We, at headquarters, have, time and again, renewed our call upon those regional forces to now give us more, now go out and do some more, now go out and make a renewed effort, and so forth. And I think some of that was coming, clearly, from a feeling of frustration on their part—"Well, we've done our side of the equation. How about some other folks pitching in here and helping us as we see these cases to a conclusion." And that frustration was expressed in those memoranda, which I appreciate, and they helped to light a fire under us here in headquarters. And I can't help but quite honestly compliment them for expressing themselves so candidly.

And I thank you, Mr. Chairman for this opportunity.

Mr. **Molinari**. Mr. Chairman, I appreciate that remark, and I will tell you why. Because, during the difficult days that this subcommittee had with EPA and the restructuring of EPA, we came to possess a great deal of memoranda which appeared to be critical of EPA. We witnessed actions which attempted to keep memoranda from us and cases where the documents were lost. I think it is healthy when employees are encouraged to issue critical memoranda. You may not agree—I may not agree—with the conclusions but I think it is something that should be done for the sake of the agency at large, and, of course, the people they serve.

So, in that context, I appreciate your comments and I hope you continue to encourage the issuance of such memoranda, even though it may put you on the spot.

Mr. LEVITAS. I would like to follow up on that and really take it even a step further. I don't think our system of government can work if we don't have that type system. Because when our Nation in recent years has found itself at the worst possible points—it has frequently begun—because of the suppression of the expression by people within the administration or within an organization, within Congress. And whether it's that type of freedom of interchange and exchange, it should be encouraged within an agency, whether it is EPA, or Mr. Kiss at FAA, or whatever. It is important that it be done.

And I think—not everybody, but I think most people that are making final decisions can filter out what is simply the free flow of give and take and what is policy based upon that free flow. The fact that people are now giving reasons when regulations are being published as to why they rejected the alternatives is, in my judgment, a giant step in the direction of laying it all out, when it used to be simply an in-agency carefully guarded secret. So, I want to support that.

And I want to go one step further. Your comments about the career employees at EPA are comments that I have made in the past and will make in the future. I'm very impressed with the professionalism. I regret that many of them, for understandable reasons, either left or were pushed out of the agency some years ago. And it's going to take some time to begin to get those people back. But Mrs. Johnson, when we were going over for that last vote, commented to me that it's healthful to see the change in attitude and spirit affecting this agency in these several years. And we're very proud of what you've done and glad that you were able to play some role in that.

I might add for the record, there are several documents which we received from EPA on their past and present enforcement policies and some pages of statistics on administrative orders and so forth. And without objection I am going to have these made a part of the record.

And I would also ask that without objection the record be kept open for 2 weeks, so that anyone wishing to submit a statement relative to the subject matter of today's hearing may do so.

There being no further business to come before the subcommittee, the subcommittee stands adjourned.

[Whereupon, at 3:03 p.m., the hearing was adjourned.]

[The following additional items were received for the record:]

Congress of the United States
House of Representatives
Washington, D. C. 20515

Nancy L. Johnson
Sixth District, Connecticut

Dear Elliott,

Enclosed is a letter from Connecticut's Department of Environmental Protection explaining their situation in regard to NPDES compliance.

I would appreciate it's inclusion in the record of our Sept. 19th I and O hearing, as at that time Connecticut's non-compliance was the subject of some discussion.

My thanks.

Best —

Nancy

STATE OF CONNECTICUT
DEPARTMENT OF ENVIRONMENTAL PROTECTION

September 19, 1984

Congresswoman Nancy Johnson
119 Cannon House Office Building
Washington, D.C. 20515

Dear Congresswoman Johnson:

I would like to take this opportunity to provide you with some information concerning Connecticut's water permit program which I understand may be the subject of a hearing before the Levitas Committee on September 19 and 20, 1984.

As you know, in 1973 Connecticut became the third state to receive delegation of the National Pollutant Discharge Elimination System (NPDES) permit program. A number of the major permits have expired this past fiscal year, and the Water Compliance Unit of my department is now involved in a major effort to reissue these permits for the third time. My reason for writing to you is that I am concerned that representatives from EPA headquarters may present testimony to the Committee regarding Connecticut's program on the basis of erroneous information, and I would ask that you consider such testimony in light of the following:

1. Of the 69 facilities (61 industrial, 8 POTWs) EPA has listed as major permits expiring in FY 84, 21 industrials should not be listed as majors at all, and 7 of the 8 POTWs do not expire until mid FY 85. Most of these errors were caused by incorrect coding of computer rating sheets by EPA several years ago, a situation which we have just recently corrected.

2. Of the remaining 41 majors whose permits expired in FY 84, 5 have been reissued as of this date and 30 have been or will be sent to public notice by the end of this month. Following the public notice period, and subject to our response to any comments, these permits will then be reissued. The 6 others are either part of ongoing enforcement actions already, or will receive enforcement action in the near future for discharging without a valid permit.

I realize this still leaves us in an unacceptable situation in that only 5 out of 41 major expired permits will actually be reissued by the end of the fiscal year. There are other extenuating circumstances, however, which are also important to note. Most Connecticut permittees, both major and minor, have been required to meet effluent limits beyond BAT (Best Available Treatment Technology) for several years, and state law continues these requirements in effect even though the permits may have expired. While some permittees may not be meeting these limits consistently, the vast majority do. Also, Connecticut maintains an active permit and enforcement program for minor industrial and municipal surface water discharges, in addition to groundwater protection and pretreatment programs. Many of the same people that are involved in these programs are also involved in the NPDES program. I might add that EPA's compliance program (and probably those of many other states) ignore the "minor" discharges, and thereby undoubtedly fail to track compliance by a significant portion of the pollution loading to the surface waters of the nation. EPA to date has not issued any minor permits, while Connecticut is in the process of a third round issuance.

Of course our permit and enforcement program is not without its shortcomings and we are in the process of upgrading the program, including adopting regulations, in order to satisfy EPA and at the same time protect the waters of the state. I do not feel that not reissuing all the major NPDES permits on time should be viewed as a major failure of the programm especially when viewed in light of our other real accomplishments. In this case, the statistics are certainly misleading. I hope you share my views on this matter, and I would ask that you make these comments part of your hearing record.

Very truly yours,

Stanley J. Pac

Stanley J. Pac
Commissioner

SJP:MJH:clf

cc: Michael Deland
Regional Administrator EPA, Region I

Laura Brown
Governor O'Neill's Office

EXXON COMPANY, U.S.A.

RECEIVED NOV 6 1984
Subcommittee on Investigations
and Oversight
Committee on Public Works
and Transportation

October 31, 1984

Mr. Hugh J. Wessinger
Resources, Community, and Economic
Development Division
United States General Accounting Office
441 G. St., N.W.
Washington, D.C. 20548

Dear Mr. Wessinger:

We believe the statement concerning National Pollutant Discharge Elimination System (NPDES) permit compliance in Louisiana, which you presented on September 19, 1984 to the Subcommittee on Investigations and Oversight of the House Committee on Public Works and Transportation, is incorrect in its presentation of Exxon's permit compliance history.

Appendices III and IV of the statement claim that 33 industrial dischargers in the Baton Rouge to New Orleans area exceeded at least one monthly average permit limit during the October 1980 through June 1984 period. Your charts indicate six months in which Exxon had at least one exceedance of a monthly average permit limit. Exxon's Baton Rouge Refinery did not exceed any monthly average permit limit during this 45 month study period. However, in the six months for which your charts show Exxon monthly average permit exceedances, our records do show that this facility exceeded only a daily maximum permit limit on a single day in each of these months. This is based on discharge monitoring reports which Exxon submitted to EPA which show these as daily maximum exceptions rather than monthly average exceptions. NPDES permits include both monthly average discharge limits and daily maximum discharge limits. Clearly, exceeding a permit limitation on a single day in a month is not the same as exceeding a monthly average discharge limit. The EPA considers monthly average permit exceedances to be more significant than daily limit exceedances, and the GAO appropriately focused on monthly average exceedances.

While Exxon's goal is to reduce NPDES permit exceptions to the lowest practical level, achieving zero exceptions is not feasible. EPA also recognizes that a zero level of exceptions is not attainable. In commenting on a revised effluent limitation guideline, EPA stated: "The Agency traditionally has recognized that it must take variability into account in establishing effluent limitations, and in recognition that 100 percent compliance is theoretically impossible, the Agency has generally set daily effluent limitations which would be met approximately 99 percent of the time."[1] In other words, the statistical approach which is the basis for permit effluent limitations recognizes that a well-operated treatment system using best available technology will exceed daily maximum permit limits about 1 percent of the time. Also three of the six daily maximum permit exceptions which occurred at our refinery were the direct result of very heavy rains. Considering the number of effluent limitations in the permit and the required sampling frequency, the number of Baton Rouge Refinery permit exceptions in this 45 month study period represents an exception frequency of less than 0.1 percent--a very good compliance record.

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[1] 47 Fed. Reg. 24536, June 4, 1982

We would appreciate it if Appendix III and Appendix IV of your statement would be revised to reflect that Exxon did not exceed any monthly average permit limits during this 45 month study period. Further, if you find that daily maximum exceptions of the other 32 dischargers in the study have been counted as monthly average permit exceptions, we recommend that the entire data base be reexamined to see if it really supports your conclusion that there is a severe and widespread NPDES permit noncompliance problem. We also ask that you inform the Subcommittee on Investigations and Oversight of your findings.

Very truly yours,

ETDC:ks

c: Members of Subcommittee on Investigation and
Oversight, House Committee on Public Works
and Transportation

Mr. Alvin L. Alm, Deputy Administrator, EPA

UNITED STATES GENERAL ACCOUNTING OFFICE
WASHINGTON, D.C. 20548

RESOURCES, COMMUNITY,
AND ECONOMIC DEVELOPMENT
DIVISION

December 7, 1984

Mr. Edward T. DiCorcia
Vice President - Refining Department
EXXON Company, USA
P.O. Box 2180
Houston, Texas 77001

Dear Mr. DiCorcia:

Thank you for your letter of October 31, 1984, concerning my prepared statement on the Environmental Protection Agency's (EPA) National Pollutant Discharge Elimination System (NPDES) permit program which I presented to the Subcommittee on Investigations and Oversight, House Committee on Public Works and Transportation, on September 19, 1984. You stated that appendices III and IV of my statement incorrectly indicate 6 months in which EXXON's Baton Rouge Refinery had at least one exceedance of monthly average permit limit. Your letter indicated that your records showed that this facility exceeded only a daily maximum permit limit on a single day in each of these 6 months.

As I am sure you recognize, the point we were making to the Committee was that all permit violations were not being summarized and reported to top EPA management. We made no distinction between the various types of permit violations that occurred, such as violations of monthly average permit limits, daily maximum limits, minimum limits, or combinations of the three. We showed in appendices II, III and IV, the extent of these violations, and whether EPA top management received such information.

You correctly point out that the violations that EXXON incurred during the 45-month period were exceedances of your permit's daily maximum permit limits, rather than exceedances of monthly average permit limits. Appendix IV of my prepared statement (All Violations of Permit Limits Reported to EPA) is accurate in reporting that the EXXON refinery violated its permit in 6 of the 45 months. Appendix III (Violations of Permit Limit(s) by At Least 100 Percent) is also accurate in showing that in 2 of the 6 months, the refinery exceeded one permit by more than 100 percent. In referring to Appendix III on page 5 of the prepared statement, I used the term "monthly average" in describing our analysis, when in fact I should have stated "any permit limit." It should be noted that most of the violations presented in Appendix III related to monthly average permit limits; the others related to the maximum daily or minimum limits, or some combination thereof.

You also note that EPA considers a monthly average exceedance to be more significant than a daily limit exceedance, and you then indicate that if the other 32 dischargers only exceeded daily limits, our position that there was a severe and widespread permit noncompliance problem was not valid.

You should recognize that EPA, in developing permit limits, considers the impact on water quality of each pollutant discharged into the receiving body of water, and generally sets the permit limit for the pollutant on the basis of both daily and monthly average numbers. An exceedance of a daily permit limit (which is set substantially higher than an average monthly limit) is considered to have the same detrimental impact on the water body as an exceedance of the monthly average limit. EPA does not consider that a violation of a monthly average limit is more significant than a violation of a daily maximum limit. Any violation of any permit limit is legally enforceable.

Your letter also pointed out that while it is EXXON's goal to reduce NPDES permit exceptions to the lowest practical level, achieving zero exceptions is not feasible. We are very interested in your comments on this matter because early next year we plan to initiate a review of the NPDES permitting process. One of the issues of our work will be to look at how EPA/states and the permittees arrive at the permit limits and how achievable these permit limits are.

We appreciate your interest and views in our NPDES testimony.

Sincerely yours,

Hugh J. Wessinger
Senior Associate Director

cc: Chairman, Subcommittee on Investigations
and Oversight, House Committee on Public
Works and Transportation

Department of Natural Resources
ENVIRONMENTAL PROTECTION DIVISION
270 WASHINGTON STREET, S.W.
ATLANTA, GEORGIA 30334

[redacted]
Commissioner

J. LEONARD LEDBETTER
Division Director

December 4, 1984

The Honorable Elliot H. Levitas
U.S. House of Representative
2416 Rayburn Building
Washington, D.C. 20515

Re: EPA Oversight of Approved State
NPDES Programs

Dear Congressman Levitas:

I have received a copy of the letter dated October 17, 1984 from Mr. Jack E. Ravan, EPA Assistant Administrator for Water, to you regarding EPA's Oversight of Approved State NPDES Programs. I am particularly concerned with the table which Mr. Ravan provided you in his letter entitled, "States With Significant Noncompliance Above National Average." If such tables are to be included in information provided to your subcommittee, they should be explained in detail since, taken at face value, they can be very misleading. The purpose of this letter is to offer further explanation for this table.

The table which was provided was apparently derived from the State "Quarterly Noncompliance Reports." It should be noted that EPA's guidance on completion of these reports has been very vague and, in fact, at the time the Quarterly Noncompliance Report was prepared from which Mr. Ravan's table was derived, EPA's guidance was for the States to complete them using their best judgment. Since that time, the guidance has become a little more defined but is still vague and there is probably still relatively little consistency from State to State and especially from Region to Region in completing this report. However, even if it is assumed that the report is accurate and based on consistent reporting from the States, it should be understood that the table is merely a reflection of States reporting significant noncompliance above the National average; this does not relate in any way to a National goal. In order for an average to be established, obviously some States must be above that average and some States must be below it. From the table, it would appear that the National average during the second quarter of FY 1984 was approximately 14% since the cutoff for States listed on the table was 15%. While we are not satisfied with a significant noncompliance rate of 16% in Georgia, the fact that we were only slightly above the National average should not be taken as an indication that the Georgia program is ineffective.

More importantly though, is the fact that this table by itself can in no way indicate the commitment or the effectiveness of the individual State programs. Since we do not actually operate the wastewater treatment facilities, our actions only indirectly affect the rate of compliance (or significant noncompliance). An important consideration in looking at noncompliance rates is the actions which were taken by the States to return these facilities to compliance through either technical assistance or enforcement action. No mention of such actions is made in the table which Mr. Ravan provided. For example, in Georgia, while the rate of significant noncompliance during the second quarter of FY 1984 was 16% (26 of 165 major facilities), it was reduced to 12% by the end of the third quarter of FY 1984 (20 of 165 major facilities) and to 10% by the end of the fourth quarter of FY 1984 (17 of a 165 major facilities). An extremely important point that was totally omitted is that all of the facilities which were reported as being in significant noncompliance during the second quarter of FY 1984 have either been returned to compliance or have had enforcement action initiated against them by the Georgia Environmental Protection Division.

Being able to compare "apples to apples" among States and EPA regions has long been difficult in most of the environmental programs - not just NPDES. EPA and the States recognize this, and EPA has attempted to have all of the States use certain data management programs to promote consistency of data. There have always been numerous States which did not use EPA's programs because of computer system differences, desires by States to employ data management programs personalized to their own needs, and other reasons. Georgia is working cooperatively with EPA Region IV and EPA Headquarters to purchase computer equipment identical to some that will be used by EPA in all of its Regional offices. Our mutual goal with EPA is to have Georgia EPD use EPA's major data management programs, to facilitate reporting in all of the environmental programs. We expect our venture to be successful and to serve as a pilot which EPA can use to enlist other States in the same system. If all States were subscribing to these systems, there would be much less confusion and much more reliable data for assessing progress and problem areas.

I trust that this information will be helpful to you in your evaluation of State programs.

Sincerely,

Leonard

J. Leonard Ledbetter
Commissioner

JLL:jcdm
cc: Mr. Bob Prolman
cc: Mr. Jack Ravan
cc: Mr. Henry Longest
cc: Mr. Charles Jeter
cc: Mr. Roger Kanerva
cc: Ms. Robbi Savage

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OFFICE OF
WATER

DEC - 1984

Honorable Elliott Levitas
Chairman, Subcommittee on Investigations
and Oversight
Committee on Public Works and Transportation
House of Representatives
Washington, D.C. 20515

Dear Mr. Levitas:

When I appeared before the Subcommittee on Investigations and Oversight on September 19, 1984, we agreed to provide you with some supplementary materials. On October 17, 1984, I forwarded a package of materials dealing with the State NPDES programs that we are tracking on a regular basis as well as our criteria for evaluating State performance in operating NPDES programs. Today I am pleased to convey the other items you requested: our analysis of the latest report prepared by the General Accounting Office (GAO) and the ten final reports from our NPDES Management Reviews. I am also sending you our final report on compliance and enforcement activity in FY 1984, which we think provides sound evidence of the progress we made during this past fiscal year. All these materials are enclosed.

Our analysis of the GAO Report showed that the compliance status of the 34 industrial facilities that are the subject of this report has, in fact, improved during the period of this study, and indicates that, although there is still room for further improvement, our basic enforcement management system is valid. The enclosed report elaborates more fully on how we arrived at our conclusions.

Also enclosed are the detailed reports that describe our findings from the ten NPDES Management Reviews. We conducted these reviews over the spring and summer months, and we examined issues related to permit issuance, pretreatment program approvals and enforcement, compliance monitoring activities, enforcement action, and State program approval and oversight practices. Following the reviews, we prepared individual draft reports that we sent to each Region for its review and comment. We also invited each Region to respond to the concerns we expressed, and to tell us about any corrective measures it had taken or planned to take as a result of our review. The final reports, therefore, reflect both our concerns and any information the Region provided in response; for issues where there was disagreement between Headquarters and the Region, the final report presents both sides. While I think my testimony before the Subcommittee summarized most of the key issues and concerns we raised in these reports, you should also find the Region-by-Region reports very interesting and informative.

Following my appearance before the Subcommittee, we received our official, end-of-the-year statistical report on Regional/State compliance and enforcement activity for FY 1984. I am pleased to report that our actual success rate with the fixed-base of significant noncompliers (SNC) was almost exactly as I projected to the Subcommittee at the time of the hearing. You may also be interested to know that it appears the SNC fixed-base in FY 1985 will be approximately 600 facilities, over 400 fewer than last year, which reflects the progress we made against this base last year. The relative split between municipal and nonmunicipal facilities is approximately the same: two-thirds municipals and one-third industrials.

I am also pleased to report that the rates of significant noncompliance with final effluent limits for all categories of facilitiies (municipals, nonmunicipals, and P.L. 92-500 facilities) dropped noticeably in the last quarterly reporting period. This resulted in a significant improvement in overall compliance status (see attachment, data as of June 30, 1984). We expect these rates to show still further improvement in the next quarterly reporting period, which will reflect the high level of enforcement activity against the SNC fixed-base during the last quarter of FY 1984 after giving the NPDES States a chance to act.

If you or your staff have questions regarding any of the enclosed materials, please let me know and we will be happy to supply additional information. I look forward to working with the Subcommittee toward our common goal of a sound, effective NPDES program.

Sincerely,

Acting for Henry L. Longest II
Jack E. Ravan
Assistant Administrator for Water

Enclosures

ATTACHMENT

COMPLIANCE STATUS

Facilities Not in Significant Noncompliance
with
Final Effluent Limits

	Baseline (June 30, 1983)	4th Quarter (June 30, 1984)
Major Nonmunicipals	92%	94%
Major Municipals	86	89
Major P.L. 92-500 Municipals	87	89
Minor P.L. 92-500 Muncipals	87	89

Compliance Schedules

Major Non-municipals	94	96
Major Municipals	90	97
Major P.L. 92-500 Municipals	N/A	N/A

Interim Effluent Limits

Major Non-municipals	87	93
Major Municipals	80	85
Major P.L. 92-500 Municipals	N/A	N/A

Additional Information to Supplement the GAO Report on NPDES Noncompliance in the Lower Mississippi River Basin

The GAO examined the compliance history of 34 NPDES permitted industrial facilities in the Lower Mississippi River basin in Louisiana for a 45 month period between October 1980 and June 1984. GAO's analysis used effluent self-monitoring reports submitted by these facilities to determine the compliance status of the facilities over the period.

The Lower Mississippi River basin is one of the most highly industrialized river basins in the country and a center for the petrochemical industry. As such, this area has a high concentration of large and complex chemical manufacturing facilities, resulting in NPDES permits which are inherently complex. These facilities should not be considered representative of NPDES permits on a National basis. Facilities like these present a challenge to the regulatory agency in the NPDES permitting and compliance program to equitably regulate each company.

In the written testimony submitted by GAO to the House Subcommittee on Investigations and Oversight, GAO stated three general conclusions on the NPDES compliance program based on an update of its December 3, 1983 report:

1. Permit noncompliance over the 45 month period was frequent and extensive.

2. Compliance reporting to top EPA management does not fully disclose the frequency and severity of noncompliance problems.

3. The EPA Region's enforcement actions have little impact on abating pollution.

EPA maintains that there is additional information that was not fully detailed in the GAO testimony which serves to clarify these issues. For this reason, EPA has conducted an internal review of these 34 facilities.

In its analysis, EPA reviewed effluent data from these facilities for 26 months from June 1982 to August 1984 because our computerized national data system (the Permit Compliance System) is relatively new and contains reliable data only for the shorter period. The data system contains effluent data from NPDES permitted facilities along with summaries of formal responses to violations. Because of the relative ease with which these data can be analyzed, we were able to correlate effluent violations with formal responses to give a picture of the effectiveness of EPA's actions.

In response to these conclusions made by GAO, we offer the following specific comments:

GAO CONCLUSION: Permit noncompliance over a 45 month period was frequent and extensive.

EPA COMMENT:

While the number of facilities which have had some type of monthly violation during the reporting period is quite high, the number of violations compared to the total possible violations is substantially less. Because most medium to large industries are divided into specific process areas, EPA usually establishes permit limits at the individual effluent pipes from these areas. The permit limits are then tailored to the specific process. As such, one facility can have a number of permitted pipes which correspond to different process areas within the facility. The GAO analysis examined 34 permitted facilities. However, at these facilities there are 135 effluent pipes and 625 different parameters that must be monitored. Taken on a pipe by pipe and parameter by parameter basis, 57 of the 135 pipes and 62 of the 625 parameters showed violations of monthly average permit limits during the past 26 month period which we analyzed. If all possible monthly average violations are totaled, there are 16,250 possible monthly violations for the 26 month period. During this period, 250 monthly average violations of any parameter at any pipe were recorded. This represents a violation rate of less than 2 percent for the period. This is not intended to mean that the violations identified by GAO are insignificant, but it does show that while some violations are occurring, to a larger extent the permits are not being violated for the majority of parameters at most of the pipes.

Of equal importance in determining the gravity of a violation is its frequency, magnitude, and duration. When the 34 facilities were examined, we found that in the past 26 month period, 15 of the facilities had one or fewer monthly average violations. Of these 15 facilities, 1 had no enforceable limits, 12 had no monthly violations of any type, and 2 had violations of only one parameter for one month. Of the 2 with 1 monthly violation, both exceedences were less than 50 percent and occurred more than 18 months ago. The remaining 19 facilities had more than 1 monthly average violation.

A breakdown of these violations for the past 26 months is shown in the Appendix. As can be seen, many of the facilities did not have continuous violations of permit parameters. Rather, they had isolated instances of noncompliance.

GAO CONCLUSION: Compliance reporting to top EPA management does not fully disclose the frequency and severity of noncompliance problems.

EPA COMMENT:

In reporting violations of permit effluent limits to the public and in determining what actions may be appropriate, EPA uses a screening process to divide violating facilities into two groups: those that violate with a low level of exceedance or have only occasional exceedances of permit effluent limits; and those that have more significant violations. The group of significant violators is then reported to the public and receives closer technical review by EPA. When the current definition of significant noncompliance is applied to the violations noted by GAO for the 34 facilities, only 13 would have appeared on the Quarterly Noncompliance Reports (QNCR) at some time during the last 9 quarters.

This does not mean that violations that do not meet the criteria for significant noncompliance are unavailable to EPA or State program managers. The computerized data system (PCS) mentioned previously maintains a record of all violations noted on DMRs and is readily accessible to program managers and can be made available to the general public through the Freedom of Information Act. The computer maintains records of the permit limitations that are violated, how often the violations occur, and the percent by which violations exceed the permit limits. Printouts showing all effluent violations are used on a regular basis in many EPA Regions and States and EPA routinely receives requests from the public on this data from a variety of public sources, including industry, public interest groups and more often marketing research firms.

GAO CONCLUSION: The EPA Regions' enforcement actions have little impact on abating noncompliance.

This conclusion can be divided into two separate issues. First, were formal EPA enforcement actions effective in bringing violating facilities into compliance, and second, did EPA take enforcement actions in each instance where it was appropriate, which includes escalating actions when the previous action did not have the desired effect?

EPA data for the 26 month period between June 1982 and August 1984, show that in many cases the formal actions were effective in obtaining compliance. During the period there were nine EPA Administrative Orders (AOs) issued for violations of permit effluent limitations. Four additional Administrative Orders were issued for other violations such as non-submittal of monitoring reports.

Of the nine AOs issued for effluent violations, six were effective in bringing the permittee back into compliance with permit requirements within the time frame required in the AO. These were:

1. Celotex Corp., LA0001376, issued 10/20/82
2. Kaiser Aluminum Corp., LA0002909, issued 11/19/82
3. Louisiana Power & Light, LA0003191, issued 11/3/83
4. Murphy Oil, LA0003646, issued 6/9/83

5. Ormet Corp., LA0005606, issued 9/24/82
6. Gulf Oil, LA0029963, issued 5/4/84

Three other AOs were less effective in bringing about expeditious, full compliance with permit limitations.

1. Freeport Chemical was issued an AO on 7/7/83 for violations resulting from discharges from its gypsum impoundment. As a response to the AO, Freeport formally petitioned for a permit modification and raised an issue related to the applicability of National Effluent Guidelines for its industrial class. Enforcement has been deferred until the guidelines issue can be resolved through rulemaking proposed on July 25, 1984.

2. Formosa Plastics was issued an AO on 8/15/83 for violations of toxic effluent limitations. While the AO put Formosa on a schedule to comply, compliance was not achieved until 4/84 for the violations covered in the AO. Since that time, Formosa has had significant violations of other toxic effluent limitations in its permit.

3. Placid Refining was issued an AO on 2/8/83 for longstanding and significant violations of many of its effluent limitations. The EPA Region then refrained from escalating the administrative enforcement action to a civil referral in order to allow the State to pursue an action in State court. Placid has now constructed a new treatment system, though compliance was not achieved by Placid until 7/83.

These examples show that in most cases, EPA administrative enforcement actions were effective in eliminating the violations.

In the three exceptions described above, compliance was not immediately achieved, but the AOs ultimately had a positive effect in stimulating the facilities to take appropriate steps towards compliance.

In answer to the second part of this GAO conclusion, EPA did formally respond to many of the monthly average violations during the period. The chart on the next page shows the time line of monthly average effluent violations over the 26 month period. The chart shows a total of 120 months in which monthly average violations occurred. The nine formal actions mentioned previously addressed 60 of the months. Of the remaining 60 months with violations, 20 were not continuous (did not occur in successive months at the same facility) and so represent isolated instances of noncompliance. Many of the remaining 40 months with violations occurred continuously at three facilities, which received no formal action by EPA.

In order to insure that these situations are dealt with, EPA has published new guidance that establishes specific timelines for enforcement responses by Regions (and States that are approved to administer the NPDES program). Before the time a facility is reported in significant noncompliance on the second consecutive Quarterly Noncompliance Report, the Region is expected to have *already* issued a formal enforcement action (AO or referral). EPA Headquarters is tracking Regional enforcement actions in its Strategic Planning and Management System which should help ensure that facilities either return to compliance or are placed on a fixed-date schedule for achieving compliance.

MONTHLY AVERAGE PERMIT VIOLATIONS

	1982							1983												1984							
	6	7	8	9	10	11	12	1	2	3	4	5	6	7	8	9	10	11	12	1	2	3	4	5	6	7	8
Allied																											
American Hoechst																		X			X	X					
Celotex			X							X																	
E.I. DuPont																											
Kaiser Alum.							X	X	X	X		X											X	X			
BASF					X		X	X							X					X							
Gulf Oil					X	X											X		X	X	X						
LA Power					X				X	X	X	X	X	X	X			X		X							
LA Power		X	X						X	X		X		X	X	X	X	X	X	X	X		X	X	X	X	
Shell Oil										X		X							X	X							
Beker								NO EFFECTIVE PERMIT LIMITS																			
Murphy Oil								X	X	X	X				X					X	X	X					
Uniroyal																											
Ethlyl					X																						
Freeport									X	X	X												X		X		
Stauffer					X																						
Stauffer																											
Monsanto																											
Allied											X									X							
Exxon																											
Ormet																											
Chevron																											
Shell																											
Shell																											
Triad	X									X										X							
Kaiser Alum.												X											X	X			
Alemania																											
Formosa						X	X	X	X	X	X	X	X	X	X		X		X	X	X	X			X	X	X
B.F. Goodrich		X																									
Agrico											X	X							X								
Gulf																			X		X						
Placid	X	X	X	X	X	X	X	X	X	X	X	X	X								X						
Marathon																											
Good Hope	X							X				X	X	X													

CALENDAR MONTHS

SUMMARY

In conclusion, EPA maintains that a comprehensive analysis of industrial compliance status must consider factors such as: the variety of processes involved; the number of permitted outfall pipes; and the many different parameters that are characteristic of industrial permittees.

The GAO report, for example, looked at 34 plants while EPA looks at 135 separately permitted effluent pipes or outfalls, each representing a different process area within a facility. EPA's discharge monitoring reports and the resulting enforcement actions deal with these specific pipes or outfalls. Any assessment of our effectiveness in enforcing compliance must take these facts into account.

We submit that from our perspective, the compliance status of the 34 industrial facilities that are the subject of this report has, in fact, improved during the period of this study, and indicates that, although there is still room for further improvement, our basic enforcement management system is valid.

APPENDIX
CHART 1

DMR DATA & ENFORCEMENT ACTIONS JUNE 1982 THRU AUGUST 1984
FOR THE 34 FACILITIES LISTED IN GAO TESTIMONY SEPTEMBER 19, 1984

FACILITY		MONTHLY AVERAGE VIOLATIONS				ADMINISTRATIVE ORDERS		SUPPLEMENT NOTES
NAME	PERMIT #	DATES	LIMITS	PIPE	% OVER LIMIT	AO ISSUE DATE	VIOLATION CODES	
Allied Chemical	LA0000329							
American Hoechst	LA0000833	11/83	TSS	001	7%	8/15/83	501, 503	
		2/84	TSS	001	36%			
		3/84	TSS	001	80%			
Celotex Corp.	LA0001376	8/82	TSS	001	92%	10/20/82	500	
		3/83	TSS	001	2%			
E.I. Dupont	LA0002771							1
Kaiser Aluminum & Chemical	LA0002909	12/82	BOD	204	277%	11/19/82	500	
		1/83	BOD	204	47%			
		2/83	BOD	204	167%			
		3/83	BOD	204	47%			1
	LA0005991	5/83	Flouride	006	563%	3/84	610	
		4/84	TSS	006	26%			
		5/84	Flouride	006	691%			
BASF Wyandotte	LA0002950	10/82	TSS	003	549%	12/23/80	500	
		10/82	COD	003	53%			
		12/82	COD	003	3%			
		1/83	TSS	003	18%			
		1/83	COD	003	5%			1
		8/83	COD	003	3%			
		1/84	TSS	003	44%			
		1/84	COD	003	17%			

DMR DATA & ENFORCEMENT ACTIONS FOR THE 34 FACILITIES
LISTED IN GAO TESTIMONY SEPTEMBER 19, 1984

FACILITY		MONTHLY AVERAGE VIOLATIONS				ADMINISTRATIVE ORDERS		
NAME	PERMIT #	DATES	LIMITS	PIPE	% OVER LIMIT	AO ISSUE DATE	VIOLATION CODES	SUPPLEMENT NOTES
Gulf Oil Prod.	LA0003115	10/83	Sulfide	101	45%			
		12/83	BOD	101	21%			
		12/83	Sulfide	101	201%			
		1/84	Sulfide	101	184%			
		2/84	Sulfide	101	24%			
		10/82	Alkaline	401	412%			
		11/82	Alkaline	401	39%			
		11/82	BOD	401	111%			
Louisiana Power & Lt.	LA0003191	2/82	BOD	002	130%	11/3/83	500	2
		3/83	BOD	002	60%			
		4/83	BOD	002	63%			
		5/83	BOD	002	7%			
		1/84	BOD	002	20%			
		6/83	TSS	003	10%			
		10/82	TSS	004	987%			
		7/83	TSS	004	70%			
		8/83	TSS	004	83%			
		11/83	TSS	004	47%			
Louisiana Power & Lt.	LA0007439	5/83	TSS	002	10%	6/11/81	500	
		1/84	TSS	002	33%	7/30/81	501, 552	
		2/84	TSS	002	7%	12/25/81	600	
		7/82	TSS	003	100%			
		7/82	O&G	003	1453%			
		8/82	O&G	003	53%			
		8/82	TSS	003	247%			
		10/83	O&G	003	17%			
		6/84	TSS	003	13%			

4 B Graph
W-5
W-6
W-13
W-14
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MUNICIPAL AND NON-MUNICIPAL COMPLIANCE STATUS

On the attached forms, for major non-municipals (excluding federal facilities), major municipals (including P.L. 92-500 municipals) and major and minor P.L. 92-500 municipals, please fill in, by Region and nationally, by EPA and NPDES States:

- The total number of permits.
- The number of permittees on final effluent limits and the number and percent of those in significant noncompliance with their final effluent limits.
- The number of permittees in significant noncompliance with their final effluent limits that need construction to meet final effluent limits.
- The number of permittees on construction schedules and/or interim effluent limits and the number and percent of those in significant noncompliance with their construction schedules and the number and percent in significant noncompliance with their interim effluent limits. If a facility is in significant noncompliance with both its construction schedule and interim effluent limits, it should be reported in noncompliance with its construction schedule.

As in the past, start-of-year compliance information was based on third quarter FY 1983 data and first quarter actual information on fourth quarter FY 1983 data. Second quarter actual information should be based on first quarter FY 1984 data; third quarter actual information on second quarter FY 1984 data; and fourth quarter actual information on third quarter FY 1984 data.

COMMENTS:

DMR DATA & ENFORCEMENT ACTIONS FOR THE 34 FACILITIES
LISTED IN GAO TESTIMONY SEPTEMBER 19, 1984

FACILITY		MONTHLY AVERAGE VIOLATIONS				ADMINISTRATIVE ORDERS		
NAME	PERMIT #	DATES	LIMITS	PIPE	% OVER LIMIT	AO ISSUE DATE	VIOLATION CODES	SUPPLEMENT NOTES
Louisiana Power & Lt. (cont.)		2/83	BOD	004	140%			
		3/83	BOD	004	30%			
		7/83	BOD	004	17%			
		11/83	BOD	004	7%			
		12/83	BOD	004	20%			
		12/83	TSS	004	10%			
		1/84	BOD	004	8%			
		2/84	BOD	004	17%			
		2/84	TSS	004	8%			
		4/84	TSS	004	12%			
		5/84	BOD	004	80%			
		7/84	BOD	004	10%			
		8/83	TSS	01A	20%			
		9/83	TSS	01A	130%			
		5/84	TSS	01A	23%			
		7/84	TSS	01A	7%			
		5/84	IRON	01B	50%			
Shell Oil	LA0003522	2/83	TSS	002	5%			3
		4/83	TSS	002	5%			
		12/83	BOD	002	85%			
		1/84	BOD	002	18%			
		1/84	LEAD	002	120%			
Beker Oil	LA0003638							4
Murphy Oil	LA0003646	1/83	TSS	002	43%	1/15/81	500	
		1/83	PHENOL	002	52%	6/15/81	500	
		1/83	AMMONIA	002	80%	6/9/83	500, 350	

DMR DATA & ENFORCEMENT ACTIONS FOR THE 34 FACILITIES
LISTED IN GAO TESTIMONY SEPTEMBER 19, 1894

FACILITY		MONTHLY AVERAGE VIOLATIONS				ADMINISTRATIVE ORDERS		
NAME	PERMIT #	DATES	LIMITS	PIPE	% OVER LIMIT	AO ISSUE DATE	VIOLATION CODES	SUPPLEMENT NOTES
Murphy Oil (cont.)		2/83	TSS	002	18%			
		3/83	TSS	002	35%			
		4/83	TSS	002	73%			
		8/83	TSS	002	44%			
		1/84	AMMONIA	002	36%			
		2/84	AMMONIA	002	93%			
		3/84	AMMONIA	002	36%			
Uniroyal Inc.	LA0003905	NO MONTHLY AVERAGE VIOLATIONS						
Ethyl Corp.	LA0004090	12/82	LEAD	001	10%	11/25/80	500	
						3/30/81	500	
Freeport Chem.	LA0004847	2/83	PHOS.	001	71%	7/7/83	500	5
		2/83	FLOURIDE	001	26%		552	
		3/83	PHOS.	001	96%			
		3/83	FLOURIDE	001	38%			
		4/83	PHOS.	001	35%			
		5/83	FLOURIDE	001	7%			
		7/83	FLOURIDE	001	102%			
		8/83	FLOURIDE	001	11%			
		5/84	PHOS.	001	25%			
		7/84	PHOS.	001	151%			
Stauffer Chem.	LA0005231	NO MONTHLY AVERAGE VIOLATIONS						
	LA0005223	10/82	SULFITE	002	10%			

DMR DATA & ENFORCEMENT ACTIONS FOR THE 34 FACILITIES
LISTED IN GAO TESTIMONY SEPTEMBER 19, 1894

FACILITY		MONTHLY AVERAGE VIOLATIONS				ADMINISTRATIVE ORDERS		
NAME	PERMIT #	DATES	LIMITS	PIPE	% OVER LIMIT	AO ISSUE DATE	VIOLATION CODES	SUPPLEMENT NOTES
Monsanto Co.	LA0005266	NO MONTHLY AVERAGE VIOLATIONS						
Allied Chem.	LA0005479	4/83 1/84	TSS CHROM.	001 001	63% 20%			
Exxon Corp.	LA0005584	NO MONTHLY AVERAGE VIOLATIONS						6
Ormet Corp.	LA0005606	NO MONTHLY AVERAGE VIOLATIONS				10/11/80 9/24/82	500 500	
Chevron Chem.	LA0005738	NO MONTHLY AVERAGE VIOLATIONS						
Shell Chem.	LA0005754 LA0005762	NO MONTHLY AVERAGE VIOLATIONS NO MONTHLY AVERAGE VIOLATIONS						
Triad Chem.	LA0005959	6/82 3/83 1/84	AMMONIA AMMONIA AMMONIA	001 001 001	3% 9% 6%	5/4/81	500	7
Allemania Chem.	LA0006009	NO MONTHLY AVERAGE VIOLATIONS						
Formosa Plastics	LA0006149	11/82 12/82	TOC TOC	002 002	2% 47%	8/15/83	500 501	8

DMR DATA & ENFORCEMENT ACTIONS FOR THE 34 FACILITIES
LISTED IN GAO TESTIMONY SEPTEMBER 19, 1894

FACILITY		MONTHLY AVERAGE VIOLATIONS				ADMINISTRATIVE ORDERS		
NAME	PERMIT #	DATES	LIMITS	PIPE	% OVER LIMIT	AO ISSUE DATE	VIOLATION CODES	SUPPLEMENT NOTES
Formosa Plastics (cont.)		12/82	EDC	002	26%		503	
		1/83	TOC	002	29%			
		2/83	TOC	002	60%			
		3/83	TOC	002	44%			
		5/83	TOC	002	37%			
		6/83	TOC	002	32%			
		7/83	TOC	002	35%			
		8/83	TOC	002	7%			
		10/83	TOC	002	46%			
		12/83	TOC	002	53%			
		1/84	TOC	002	53%			
		2/84	TOC	002	30%			
		3/84	TOC	002	12%			
		1/84	CHROM	001	46%			
		6/84	TSS	001	7%			
		7/84	TSS	001	14%			
		7/84	LEAD	001	44%			
		8/84	LEAD	001	65%			
		8/84	CHLORINE	001	3005%			
BF Goodrich Chem.	LA0006165	7/82	TOC	001	43%			
Agrico Chem.	LA0029769	4/83	NITROGEN	001	42%			9
		4/83	AMMONIA	001	151%			
		4/83	PHOSPHATE	001	1920%			
		4/83	FLOURIDE	001	696%			
		4/83	CHROM	001	420%			
		4/83	ZINC	001	600%			
		5/83	NITROGEN	001	127%			

DMR DATA & ENFORCEMENT ACTIONS FOR THE 34 FACILITIES
LISTED IN GAO TESTIMONY SEPTEMBER 19, 1894

FACILITY		MONTHLY AVERAGE VIOLATIONS				ADMINISTRATIVE ORDERS		
NAME	PERMIT #	DATES	LIMITS	PIPE	% OVER LIMIT	AO ISSUE DATE	VIOLATION CODES	SUPPLEMENT NOTES
Agrico Chem. (cont.)		5/83	AMMONIA	001	360%			
		5/83	PHOSPHATE	001	6743%			
		5/83	FLOURIDE	001	1936%			
		5/83	CHROM	001	894%			
		5/83	ZINC	001	1500%			
		4/83	PHOSPHOR	002	3686%			
		4/83	FLOURIDE	002	1368%			
		5/83	PHOSPHOR	002	4151%			
		5/83	FLOURIDE	002	320%			
		12/83	NITROGEN	004	118%			
Gulf Oil Chem.	LA0029963	12/83	ETHYLBENZ	001	316%	5/4/84	500 effluent violations	
		2/84	TOLUENE	001	1667%			
		2/84	BENZENE	001	1366%			
		2/84	ETHYLBENZ	001	926%			
Placid Refining	LA0039390	IN VIOLATION FOR EVERY MONTH AND EVERY PARAMETER UNTIL 6/83. NO MONTHLY AVERAGE VIOLATIONS SINCE 6/83.				8/9/82 2/8/83 STATE JUDICIAL	600 500 effluent violations	10
Marathon Oil	LA0045683	NO MONTHLY AVERAGE VIOLATIONS				4/13/82	500 effluent violations	
Good Hope Refineries	LA0052051	6/82	SULFIDE	001	23%	10/1/81	500 effluent violations	

DMR DATA & ENFORCEMENT ACTIONS FOR THE 34 FACILITIES LISTED IN GAO TESTIMONY SEPTEMBER 19, 1894

FACILITY		MONTHLY AVERAGE VIOLATIONS				ADMINISTRATIVE ORDERS		
NAME	PERMIT #	DATES	LIMITS	PIPE	% OVER LIMIT	AO ISSUE DATE	VIOLATION CODES	SUPPLEMENT NOTES
Good Hope Refineries (cont.)		1/83	SULFIDE	001	5%		350 no noncom. notice	
		5/83	SULFIDE	001	4%	10/28/82	501 inadequate monitor	
		6/83	SULFIDE	001	26%			
		7/83	SULFIDE	001	13%			

COMPLIANCE INFORMATION
P.L. 92-500 MAJOR MUNICIPALS

REGION	Total # Major 92-500 Municipal Permits	# Major 92-500 Permittees on FEL	/ # Permittees in SNC with FEL	(# Needing Construction to Meet FEL)	= % Permittees in SNC with FEL
REGION I					
EPA		75	/ 9	( )	= 12
NPDES States		25	/ 2	( )	= 8
REGION II					
EPA		2	/ 0	( )	= 0
NPDES States		72	/ 6	( )	= 8
REGION III					
EPA		1	/ 1	( )	= 100
NPDES States		127	/ 32	( )	= 25
REGION IV					
EPA		20	/ 3	( )	= 15
NPDES States		145	/ 13	( )	= 9
REGION V					
EPA		-	/ -	( )	= -
NPDES States		178	/ 17	( )	= 10
REGION VI					
EPA		80	/ 4	( )	= 5
NPDES States		-	/ -	( )	= -
REGION VII					
EPA		-	/ -	( )	= -
NPDES States		101	/ 4	( )	= 4
REGION VIII					
EPA		20	/ 3	( )	= 15
NPDES States		46	/ 6	( )	= 13
REGION IX					
EPA		8	/ 1	( )	= 13
NPDES States		83	/ 10	( )	= 12
REGION X					
EPA		30	/ 1	( )	= 3
NPDES States		26	/ 2	( )	= 8
NATIONAL					
EPA		236	/ 22	( )	9
NPDES States		803	/ 92	( )	= 11
TOTAL		1039	/ 114	( )	= 11

COMPLIANCE INFORMATION
P.L. 92-500 MINOR MUNICIPALS

REGION	Total # Minor 92-500 Municipal Permits	# Minor 92-500 Permittees on FEL	/	# Permittees in SNC with FEL	(# Needing Construction to Meet FEL)	=	% Permittees in SNC with FEL
REGION I							
EPA		25	/	10	( )	=	40
NPDES States		28	/	4	( )	=	14
REGION II							
EPA		1	/	0	( )	=	0
NPDES States		19	/	5	( )	=	26
REGION III							
EPA		0	/	-	( )	=	-
NPDES States		118	/	26	( )	=	22
REGION IV							
EPA		4	/	0	( )	=	0
NPDES States		120	/	18	( )	=	15
REGION V							
EPA		-	/	-	( )	=	-
NPDES States		283	/	14	( )	=	5
REGION VI							
EPA		216	/	30	( )	=	14
NPDES States		-	/	-	( )	=	-
REGION VII							
EPA		-	/	-	( )	=	-
NPDES States		446	/	46	( )	=	10
REGION VIII							
EPA		51	/	0	( )	=	0
NPDES States*		21	/	0	( )	=	0
REGION IX							
EPA		15	/	4	( )	=	27
NPDES States		38	/	3	( )	=	8
REGION X							
EPA		14	/	1	( )	=	7
NPDES States		107	/	8	( )	=	7
NATIONAL							
EPA		326	/	45	( )		14
NPDES States		1180	/	124	( )	=	11
TOTAL		1506	/	169	( )	=	11

* Data on ND not available.

W-7
W-8
W-15
W-16

REDUCING THE NUMBER OF NPDES FACILITIES IN SIGNIFICANT NONCOMPLIANCE

On the attached forms for major non-municipals (excluding federal facilities) and major municipals (including P.L. 92-500 municipals), please provide, by Region and nationally, for EPA and NPDES States the fourth quarter actual numbers for those facilities in compliance and those against which enforcement action has been taken. Enforcement actions include any statutory remedy such as a Federal administrative order or State equivalent action, a Federal notice of violation (reported separately), a judicial referral, or a court-approved consent decree.

Fourth quarter actual compliance status should be based on third quarter FY 1984 data. Fourth quarter enforcement actions should be the cumulative number of enforcement actions taken through the fourth quarter against the significant noncompliers. If a facility is in compliance and has had an enforcement action taken against it, count it in compliance and do NOT count the enforcement action. Also, please do not count more than one enforcement action against a facility. If a facility in compliance in a previous quarter returns to significant noncompliance for the same parameter, count it in SNC, either as pending or as having an enforcement action taken against it.

COMMENTS:

JUNE 30, 1984

COMPLIANCE STATUS

ALL MAJOR NON-MUNICIPALS

(Excluding Federal Facilities)

REGION		Total # Major Non-Municipal Permits	# Major Non-Munic. permittees on FEL	/	# Permittees in SNC with FEL	(# Needing Construction to Meet FEL)	=	% Permittees in SNC with FEL	# Major Non/Munic permittees on CS & IEL*	/	# Permittees in SNC with CS	=	% Permittees in SNC with CS	# Permittees in SNC with IEL	=	% Permittees in SNC with IEL
REGION I	EPA	186	173	/	13	( )	=	8	13	/	1	=	8	1	=	8
	NPDES States	167	141	/	6	( )	=	4	26	/	3	=	12	0	=	0
REGION II	EPA	67	42	/	5	( )	=	12	25	/	2	=	8	2	=	8
	NPDES States	401	364	/	25	( )	=	7	37	/	0	=	0	0	=	0
REGION III	EPA	3	3	/	0	( )	=	0	0	/	-	=	-	-	=	-
	NPDES States	404	355	/	72	( )	=	20	49	/	0	=	0	9	=	18
REGION IV	EPA	115	114	/	3	( )	=	3	1	/	0	=	0	0	=	0
	NPDES States	690	681	/	41	( )	=	6	9	/	0	=	0	1	=	11
REGION V	EPA	-	-	/	-	( )	=	-	-	/	-	=	-	-	=	-
	NPDES States	681	670	/	30	( )	=	4	11	/	0	=	0	2	=	18

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* If a facility is in SNC with both its construction schedule and interim limits, it should be reported in noncompliance with its construction schedule.

W-5
W-6

COMPLIANCE STATUS
ALL MAJOR NON-MUNICIPALS
(Excluding Federal Facilities)

REGION	Total # Major Non-Municipal Permits	# Major Non-Munic. permittees on FEL /	# Permittees in SNC with FEL	(# Needing Construction to Meet FEL) =	% Permittees in SNC with FEL	# Major Non-Munic. Permittees on CS & IEL* /	# Permittees in SNC with CS =	% Permittees in SNC with CS	# Permittees in SNC with IEL =	% Permittees in SNC with IEL
REGION VI EPA	447	390 /	14	( ) =	4	57 /	2 =	4	0 =	0
NPDES States	-	- /	-	( ) =	-	- /	- =	-	- =	-
REGION VII EPA	-	- /	-	( ) =	-	- /	- =	-	- =	-
NPDES States	113	109 /	11	( ) =	10	4 /	0 =	0	2 =	50
REGION VIII EPA	22	16 /	3	( ) =	19	6 /	0 =	0	0 =	0
NPDES States	104	98 /	4	( ) =	4	6 /	1 =	17	0 =	0
REGION IX EPA	25	25 /	0	( ) =	0	0 /	- =	-	- =	-
NPDES States	99	95 /	2	( ) =	2	4 /	0 =	0	0 =	0
REGION X EPA	359	359 /	2	( ) =	1	0 /	- =	-	- =	-
NPDES States	75	75 /	3	( ) =	4	0 /	- =	-	- =	-
NATIONAL EPA	1224	1122 /	40	( ) =	4	102 /	5 =	5	3 =	3
NPDES States	2734	2588 /	194	( ) =	7	146 /	4 =	3	14 =	10
TOTAL	3958	3710 /	234	( ) =	6	248 /	9 =	4	17 =	7

* If a facility is in SNC with both its construction schedule and interim limits, it should be reported in noncompliance with its construction schedule.

COMPLIANCE STATUS
ALL MAJOR MUNICIPALS
(Including 92-500 Municipals)

REGION	Total # Major Municipal Permits	# Major Munic. Permittees on FEL	/	# Permittees in SNC with FEL	(# Needing Construction to Meet FEL)	=	% Permittees in SNC with FEL	# Major Munic. Permittees on CS & IEL*	/	# Permittees in SNC with CS	=	% Permittees in SNC with CS	# Permittees in SNC with IEL	=	% Permittees in SNC with IEL
REGION I EPA	232	150	/	16	( )	=	11	82	/	0	=	0	21	=	26
NPDES States	111	90	/	5	( )	=	6	21	/	0	=	0	5	=	24
REGION II EPA	31	22	/	0	( )	=	0	9	/	0	=	0	0	=	0
NPDES States	444	281	/	38	( )	=	14	163	/	15	=	·9	16	=	10
REGION III EPA	1	1	/	1	( )	=	100	0	/	-	=	-	-	=	-
NPDES States	369	215	/	41	( )	=	19	154	/	5	=	3	18	=	12
REGION IV EPA	135	64	/	10	( )	=	16	71	/	1	=	1	6	=	8
NPDES States	576	328	/	30	( )	=	9	248	/	2	=	1	38	=	15
REGION V EPA	-	-	/	-	( )	=	-	-	/	-	=	-	-	=	-
NPDES States	642	400	/	41	( )	=	10	242	/	5	=	2	25	=	10

* If a facility is in SNC with both its construction schedule and interim limits, it should be reported in noncompliance with its construction schedule.

COMPLIANCE STATUS
ALL MAJOR MUNICIPALS
(Including 92-500 Municipals)

REGION	Total # Major Municipal Permits	# Major Munic. Permittees on FEL /	# Permittees in SNC with FEL	(# Needing Construction to Meet FEL) =	% Permittees in SNC with FEL	# Major Munic. Permittees on CS & IEL* /	# Permittees in SNC with CS =	% Permittees in SNC with CS	# Permittees in SNC with IEL =	% Permittees in SNC with IEL
REGION VI EPA	412	224	16	( )	7	188	11	6	52	28
NPDES States	-	-	-	( )	-	-	-	-	-	-
REGION VII EPA	-	-	-	( )	-	-	-	-	-	-
NPDES States	214	146	13	( )	9	68	0	0	15	22
REGION VIII EPA	63	29	4	( )	14	34	4	12	7	21
NPDES States	139	110	13	( )	12	29	3	10	5	17
REGION IX EPA	25	16	2	( )	13	9	0	0	0	0
NPDES States	162	116	14	( )	12	46	2	4	6	13
REGION X EPA	47	37	3	( )	8	10	0	0	0	0
NPDES States	87	62	4	( )	6	25	0	0	1	4
NATIONAL EPA	946	543	52	( )	10	403	16	4	86	21
NPDES States	2744	1748	199	( )	11	996	32	3	129	13
TOTAL	3690	2291	251	( )	11	1399	48	3	215	15

* If a facility is in SNC with both its construction schedule and interim limits, it should be reported in noncompliance with its construction schedule.

REDUCING THE NUMBER OF MAJOR NON-MUNICIPALS IN SIGNIFICANT NONCOMPLIANCE WITH FEL

(Excluding Federal Facilities)

REGION	# Permittees in SNC with FEL As of 6/30/83	1st Quarter			2nd Quarter			3rd Quarter			4th Quarter		
		Target (Compl. + Enf.)	Actual		Target (Compl. + Enf.)	Actual		Target (Compl. + Enf.)	Actual		Target (Compl. + Enf.)	Actual	
			Compl.	Enf.		Compl.	Enf.		Compl.	Enf.		Compl.	Enf.
REGION I													
EPA	14	4	8	1	8	7	1	12	5	1	14	8	6
NPDES States	3	0	2	0 ( )	1	2	0 ( )	2	1	0 ( )	3	2	1 ( )
REGION II													
EPA	10	3	3	0	3	4	0	7	6	1	10	4	6
NPDES States	45	25	25	1 ( )	30	30	1 ( )	37	32	4 ( )	45	34	11 (1)
REGION III													
EPA	0	-	-	-	-	-	-	-	-	-	-	-	-
NPDES States	46	2	8	6 ( )	8	18	11 (1)	28	14	13 (2)	46	18	28 (9)
REGION IV													
EPA	1	0	0	0	1	1	0	1	0	1	1	0	1
NPDES States	50	14	16	2 ( )	26	22	7 ( )	42	29	7 ( )	50	35	15 ( )
REGION V													
EPA	-	-	-	-	-	-	-	-	-	-	-	-	-
NPDES States	38	10	16	2 (2)	20	20	0 ( )	29	26	4 ( )	38	31	7 ( )
REGION VI													
EPA	19	7	10	3	12	13	1	17	13	3	19	13	6
NPDES States	-	-	-	- ( )	-	-	- ( )	-	-	- ( )	-	-	- ( )

( ) Number of NOVs issued to NPDES States by EPA.

REDUCING THE NUMBER OF MAJOR NON-MUNICIPALS IN SIGNIFICANT NONCOMPLIANCE WITH FEL

(Excluding Federal Facilities)

REGION	# Permittees in SNC with FEL As of 6/30/83	1st Quarter			2nd Quarter			3rd Quarter			4th Quarter		
		Target (Compl. + Enf.)	Actual		Target (Compl. + Enf.)	Actual		Target (Compl. + Enf.)	Actual		Target (Compl. + Enf.)	Actual	
			Compl.	Enf.		Compl.	Enf.		Compl.	Enf.		Compl.	Enf.
REGION VII													
EPA	-	-	-	-	-	-	-	-	-	-	-	-	-
NPDES States	6	1	4	0 ( )	3	3	0 ( )	4	1	0 ( )	6	5	1 ( )
REGION VIII													
EPA	2	0	1	0	0	1	0	1	1	0	2	2	0
NPDES States	4	1	3	0 ( )	3	4	0 ( )	4	3	1 ( )	4	3	1 ( )
REGION IX													
EPA	2	0	0	0	0	2	0	2	2	0	2	2	0
NPDES States	6	2	0	2 ( )	2	1	2 ( )	4	5	0 ( )	6	5	1 ( )
REGION X													
EPA	2	0	0	0	0	0	0	0	0	0	2	0	0
NPDES States	7	2	1	0 ( )	3	2	0 ( )	4	4	1 ( )	7	2	5 ( )
NATIONAL													
EPA	50	14	22	4	24	28	2	40	27	6	50	29	19
NPDES States	205	57	75	13 (2)	96	102	21 (1)	154	115	30 (2)	205	135	70 (10)
TOTAL	255	71	97	17 (2)	120	130	23 (1)	194	142	36 (2)	255	164	89 (10)

( ) Number of NOVs issued to NPDES States by EPA.

REDUCING THE NUMBER OF
MAJOR NON-MUNICIPALS IN SIGNIFICANT NONCOMPLIANCE WITH CS AND/OR IEL

(Excluding Federal Facilities)

REGION	# Permittees in SNC with CS/IEL As of 6/30/83	1st Quarter			2nd Quarter			3rd Quarter			4th Quarter		
		Target (Compl. + Enf.)	Actual		Target (Compl. + Enf.)	Actual		Target (Compl. + Enf.)	Actual		Target (Compl. + Enf.)	Actual	
			Compl.	Enf.		Compl.	Enf.		Compl.	Enf.		Compl.	Enf.
REGION I													
EPA	5	1	0	0	2	1	0	3	3	0	5	3	2
NPDES States	5	1	1	0 ( )	2	2	0 ( )	3	4	0 ( )	5	4	1 ( )
REGION II													
EPA	4	1	1	0	1	2	0	2	2	0	4	3	0
NPDES States	6	2	2	0 ( )	2	3	0 ( )	5	4	0 ( )	6	4	2 ( )
REGION III													
EPA	0	-	-	-	-	-	-	-	-	-	-	-	-
NPDES States	4	0	1	1 ( )	0	1	1 ( )	1	2	1 ( )	4	2	2 ( )
REGION IV													
EPA	0	-	-	-	-	-	-	-	-	-	-	-	-
NPDES States	1	0	0	0 ( )	0	0	0 ( )	0	0	1 ( )	1	0	1 ( )
REGION V													
EPA	-	-	-	-	-	-	-	-	-	-	-	-	-
NPDES States	1	0	1	0 ( )	1	1	0 ( )	1	1	0 ( )	1	1	0 ( )
REGION VI													
EPA	3	0	3	0	1	3	0	2	3	0	3	3	0
NPDES States	-	-	-	- ( )	-	-	- ( )	-	-	- ( )	-	-	- ( )

( ) Number of NOVs issued to NPDES States by EPA.

REDUCING THE NUMBER OF MAJOR NON-MUNICIPALS IN SIGNIFICANT NONCOMPLIANCE WITH CS AND/OR IEL

(Excluding Federal Facilities)

REGION	# Permittees in SNC with CS/IEL As of 6/30/83	1st Quarter			2nd Quarter			3rd Quarter			4th Quarter		
		Target (Compl. + Enf.)	Actual		Target (Compl. + Enf.)	Actual		Target (Compl. + Enf.)	Actual		Target (Compl. + Enf.)	Actual	
			Compl.	Enf.		Compl.	Enf.		Compl.	Enf.		Compl.	Enf.
REGION VII													
EPA	-	-	-	-	-	-	-	-	-	-	-	-	-
NPDES States	2	1	2	0 ( )	1	2	0 ( )	1	1	0 ( )	2	2	0 ( )
EGION VIII													
EPA	1	0	0	1	1	0	1	1	1	0	1	0	1
NPDES States	1	0	1	0 ( )	0	1	0 ( )	1	1	0 ( )	1	1	0 ( )
REGION IX													
EPA	0	-	-	-	-	-	-	-	-	-	-	-	-
NPDES States	3	2	1	2 ( )	2	1	2 ( )	2	1	2 ( )	3	1	2 ( )
REGION X													
EPA	0	-	-	-	-	-	-	-	-	-	-	-	-
NPDES States	0	-	-	- ( )	-	-	- ( )	-	-	- ( )	-	-	- ( )
NATIONAL													
EPA	13	2	4	1	5	6	1	8	9	0	13	9	3
NPDES States	23	6	9	3 ( )	8	11	3 ( )	14	14	4 ( )	23	15	8 ( )
TOTAL	36	8	13	4 ( )	13	17	4 ( )	22	23	4 ( )	36	24	11 ( )

( ) Number of NOVs issued to NPDES States by EPA.

REDUCING THE NUMBER OF MAJOR MUNICIPALS IN SIGNIFICANT NONCOMPLIANCE WITH FEL

(Including Major 92-500 Municipals)

REGION	# Per-mittees in SNC with FEL As of 6/30/83	1st Quarter			2nd Quarter			3rd Quarter			4th Quarter		
		Target (Compl. + Enf.)	Actual Compl.	Actual Enf.	Target (Compl. + Enf.)	Actual Compl.	Actual Enf.	Target (Compl. + Enf.)	Actual Compl.	Actual Enf.	Target (Compl. + Enf.)	Actual Compl.	Actual Enf.
REGION I													
EPA	16	4	8	0	9	10	0	13	11	1	16	8	7
NPDES States	4	0	3	0 ( )	1	3	0 ( )	2	3	1 (1)	4	3	1 ( )
REGION II													
EPA	22	0	0	0	0	3	0	0	3	19	22	3	19
NPDES States	58	15	12	4 (1)	21	29	5 (1)	29	36	6 (1)	58	40	17 (2)
REGION III													
EPA	1	0	0	0	0	0	0	1	0	0	1	0	1
NPDES States	31	3	4	3 (1)	8	12	4 (1)	20	12	12 (4)	31	15	16 (3)
REGION IV													
EPA	9	0	1	1	2	3	1	4	4	2	9	5	4
NPDES States	36	6	5	5 ( )	11	9	7 ( )	24	9	7 ( )	36	14	22 ( )
REGION V													
EPA	-	-	-	-	-	-	-	-	-	-	-	-	-
NPDES States	21	5	6	4 (1)	10	5	4 ( )	15	6	11 ( )	21	7	14 (1)
REGION VI													
EPA	29	7	7	2	14	10	6	21	17	6	29	17	12
NPDES States	-	-	-	- ( )	-	-	- ( )	-	-	- ( )	-	-	- ( )

( ) Number of NOVs issued to NPDES States by EPA.

REDUCING THE NUMBER OF MAJOR MUNICIPALS IN SIGNIFICANT NONCOMPLIANCE WITH FEL

(Including Major 92-500 Municipals)

REGION	# Permittees in SNC with FEL As of 6/30/83	1st Quarter			2nd Quarter			3rd Quarter			4th Quarter		
		Target (Compl. + Enf.)	Actual		Target (Compl. + Enf.)	Actual		Target (Compl. + Enf.)	Actual		Target (Compl. + Enf.)	Actual	
			Compl.	Enf.		Compl.	Enf.		Compl.	Enf.		Compl.	Enf.
REGION VII													
EPA	-	-	-	-	-	-	-	-	-	-	-	-	-
NPDES States	15	1	6	1 ( )	4	9	1 ( )	8	9	1 ( )	15	11	4 ( )
REGION VIII													
EPA	2	2	2	0	2	2	0	2	1	0	2	2	0
NPDES States	14	2	5	0 ( )	5	9	1 ( )	9	10	3 ( )	14	10	4 ( )
REGION IX													
EPA	2	0	0	0	0	1	0	0	1	1	2	2	0
NPDES States	14	3	2	0 ( )	6	7	0 ( )	9	6	0 ( )	14	10	3 ( )
REGION X													
EPA	4	3	0	2	3	0	3	3	0	3	4	0	4
NPDES States	4	1	0	0 ( )	1	3	1 (1)	2	1	2 ( )	4	1	3 ( )
NATIONAL													
EPA	85	16	18	5	30	29	10	44	37	32	85	37	47
NPDES States	197	36	43	17 (3)	67	86	23 (3)	118	92	43 (6)	197	111	84 (6)
TOTAL	282	52	61	22 (3)	97	115	33 (3)	162	129	75 (6)	282	148	131(6)

( ) Number of NOVs issued to NPDES States by EPA.

REDUCING THE NUMBER OF MAJOR MUNICIPALS IN SIGNIFICANT NONCOMPLIANCE WITH CS AND/OR IEL

(Including Major 92-500 Municipals)

REGION	# Per-mittees in SNC with CS/ IEL As of 6/30/83	1st Quarter			2nd Quarter			3rd Quarter			4th Quarter		
		Target (Compl. + Enf.)	Actual		Target (Compl. + Enf.)	Actual		Target (Compl. + Enf.)	Actual		Target (Compl. + Enf.)	Actual	
			Compl.	Enf.		Compl.	Enf.		Compl.	Enf.		Compl.	Enf.
REGION I													
EPA	19	5	2	2	10	4	3	15	3	5	19	8	11
NPDES States	5	1	1	2 ( )	2	3	2 ( )	3	4	1 ( )	5	4	1 ( )
REGION II													
EPA	9	0	0	0	0	0	0	0	0	9	9	0	9
NPDES States	70	7	8	5 (1)	15	22	8 (3)	29	33	16 (1)	70	37	31 (2)
REGION III													
EPA	0	-	-	-	-	-	-	-	-	-	-	-	-
NPDES States	65	0	7	3 ( )	7	12	5 ( )	30	18	6 ( )	65	25	38 (4)
REGION IV													
EPA	48	5	0	17	24	2	32	36	2	34	48	12	36
NPDES States	45	1	6	3 ( )	2	8	4 ( )	14	11	7 ( )	45	13	32 ( )
REGION V													
EPA	-	-	-	-	-	-	-	-	-	-	-	-	-
NPDES States	29	7	12	0 ( )	14	15	1 (1)	21	15	4 (2)	29	20	9 (3)
REGION VI													
EPA	53	13	11	8	26	17	16	39	17	25	53	17	34
NPDES States	-	-	-	- ( )	-	-	- ( )	-	-	- ( )	-	-	- ( )

( ) Number of NOVs issued to NPDES States by EPA.

W-11
W-12
W-19
W-20

COMPLIANCE INSPECTIONS

On the attached forms, please provide, by Region and nationally, for EPA and NPDES States, the actual cumulative numbers of compliance inspections of major non-municipals, of major municipals and of minor P.L. 92-500 municipals completed through the fourth quarter. Compliance inspections include:

- o Compliance sampling inspections.
- o Compliance evaluation inspections.
- o Performance audits.
- o Biomonitoring inspections.
- o Diagnostic inspections.

COMMENTS:

FEDERAL FACILITY COMPLIANCE STATUS

The Office of Federal Activities with your help, established an inventory of all major federal facilities during the first quarter of FY 1984. OFA had committed to monitor their compliance status through the Management Accountability System (see AMAS, FY 1984 Goals, Objectives, Commitments and Measures, page OFA-1). OFA needs yor help in reporting the required data. On the attached form, please report for the fourth quarter the number of inspections and the compliance status of the major federal facilities (those identified in the first quarter inventory) with environmental standards under the Clean Water Act. OMSE will submit the information you provide to OFA for review and analysis.

COMMENTS:

FEDERAL FACILITY COMPLIANCE STATUS

Measure	3rd Quarter	4th Quarter
- # of major federal facilities inspected during the quarter.	26	15
- # of major federal facilities reported in compliance.	110	127
- # of major federal facilities reported in unknown status.	9	0
- # of major federal facilities reported in noncompliance.	28	23

REDUCING THE NUMBER OF FEDERAL FACILITIES IN SIGNIFICANT NONCOMPLIANCE

On the attached forms for major federal facilities, please provide, by Region and nationally, for EPA and NPDES States the fourth quarter actual numbers for those facilities in compliance and those which have been addressed. Significant noncomplying federal facilities may be addressed in the following ways: a) returned to compliance, b) placed on an acceptable compliance schedule or compliance agreement, c) documented dispute forwarded to Headquarters for resolution, or d) Presidential exemption.

Fourth quarter actual compliance status should be based on third quarter FY 1984 data. Fourth quarter number addressed should be the cumulative number of actions taken through the fourth quarter against the significant noncompliers. If a facility is in compliance and has also been addressed in one of the above mentioned ways, count it in compliance and do NOT count it as having been addressed. Also, please do not count more than one action against a facility. If a facility in compliance in a previous quarter returns to significant noncompliance for the same parameter, count it in SNC, either as pending or as having an enforcement action taken against it.

COMMENTS:

REDUCING THE NUMBER OF MAJOR MUNICIPALS IN SIGNIFICANT NONCOMPLIANCE WITH CS AND/OR IEL

(Including Major 92-500 Municipals)

REGION	# Per-mittees in SNC with CS/IEL As of 6/30/83	1st Quarter			2nd Quarter			3rd Quarter			4th Quarter		
		Target (Compl. + Enf.)	Actual		Target (Compl. + Enf.)	Actual		Target (Compl. + Enf.)	Actual		Target (Compl. + Enf.)	Actual	
			Compl.	Enf.		Compl.	Enf.		Compl.	Enf.		Compl.	Enf.
REGION VII													
EPA	-	-	-	-	-	-	-	-	-	-	-	-	-
NPDES States	6	0	1	0 (.)	0	1	0 ( )	2	2	0 ( )	6	3	3 ( )
EGION VIII													
EPA	17	0	0	0	3	4	0	10	4	3	17	8	8
NPDES States	14	1	3	0 ( )	5	6	0 ( )	12	5	1 (1)	14	10	4 ( )
REGION IX													
EPA	9	0	0	1	0	0	1	0	2	2	9	3	6
NPDES States	28	6	2	4 (1)	13	5	3 ( )	18	11	5 ( )	28	11	8 ( )
REGION X													
EPA	2	1	1	0	1	2	0	2	2	0	2	1	1
NPDES States	2	0	0	0 ( )	0	0	1 ( )	1	1	1 ( )	2	1	1 ( )
NATIONAL													
EPA	157	24	14	28	64	29	52	102	30	78	157	49	105
NPDES States	264	23	40	17 (2)	58	72	24 (4)	130	100	41 (4)	264	124	127(9)
TOTAL	421	47	54	45 (2)	122	101	76 (4)	232	130	119(4)	421	173	232(9)

( ) Number of NOVs issued to NPDES States by EPA.

COMPLIANCE INSPECTIONS

REGION	Major Non-Municipals					Major Municipals					Minor P.L. 92-500 Municipals				
	Target (EOY)	ACTUAL				Target (EOY)	ACTUAL				Target (EOY)	ACTUAL			
		1st Q	2nd Q (Cum)	3rd Q (Cum)	4th Q (Cum)		1st Q	2nd Q (Cum)	3rd Q (Cum)	4th Q (Cum)		1st Q	2nd Q (Cum)	3rd Q (Cum)	4th Q (Cum)
REGION I EPA	50	6	34	72	111	150	13	100	170	196	10	0	1	7	13
States	254	5	79	254	378	185	39	535	933	1325	43	2	65	90	144
REGION II EPA	155	0	24	101	133	98	0	30	96	125	10	0	0	0	2
States	434	0	96	210	259	460	3	112	218	314	23	0	3	8	11
REGION III EPA	125	0	18	49	63	116	0	24	50	80	100	0	0	53	65
States	418	10	65	173	258	352	5	61	156	293	110	1	4	17	39
REGION IV EPA	165	43	103	184	240	150	11	43	71	180	10	0	0	2	18
States	639	35	165	379	545	558	50	135	313	465	106	7	11	25	67
REGION V EPA	90	1	8	34	76	100	4	9	50	97	25	0	0	2	26
States	223	5	31	73	154	312	15	66	111	204	30	4	9	16	35
REGION VI EPA	115	24	59	103	119	110	25	73	124	156	15	14	42	58	67
States	183	27	129	191	263	172	18	96	155	233	10	5	13	17	22

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W-20

Note: PCS pull date - October 10, 1984.

COMPLIANCE INSPECTIONS

REGION	Major Non-Municipals					Major Municipals					Minor P.L. 92-500 Municipals				
		ACTUAL					ACTUAL					ACTUAL			
	Target (BOY)	1st Q	2nd Q (Cum)	3rd Q (Cum)	4th Q (Cum)	Target (BOY)	1st Q	2nd Q (Cum)	3rd Q (Cum)	4th Q (Cum)	Target (BOY)	1st Q	2nd Q (Cum)	3rd Q (Cum)	4th Q (Cum)
REGION VII															
EPA	45	2	7	12	31	59	12	22	30	67	15	2	4	6	20
States	113	2	14	37	95	196	5	40	112	207	131	13	30	108	219
REGION VIII															
EPA	45	9	17	31	35	80	7	25	42	42	10	0	0	0	0
States	150	28	53	74	78	200	31	108	169	174	60	5	29	49	50
REGION IX															
EPA	17	0	16	18	26	78	0	53	71	84	21	0	2	12	21
States	96	2	47	50	93	165	3	77	80	176	47	1	9	12	25
REGION X															
EPA	60	0	18	23	60	35	2	5	13	31	3	0	2	2	3
States	86	7	12	23	52	89	8	24	42	61	31	1	2	4	7
NATIONAL															
EPA	867	85	304	627	894	976	74	384	717	1058	219	16	51	144	235
States	2596	121	689	1464	2175	2689	177	1254	2289	3452	591	39	175	346	619
TOTAL	3463	206	993	2091	3069	3665	251	1638	3006	4510	810	55	226	490	854

*PCS Pull Date - October 10, 1984.

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MUNICIPAL PRETREATMENT

On the attached form, please provide, by Region and nationally, the actual number of municipal pretreatment programs approved and the actual number of administrative orders (containing schedules for submitting pretreatment programs) issued through the fourth quarter by EPA and by NPDES States with approved pretreatment programs.

COMMENTS:

REDUCING THE NUMBER OF MAJOR FEDERAL FACILITIES IN SIGNIFICANT NONCOMPLIANCE WITH FEL

REGION	# Per-mittees in SNC with FEL As of 6/30/83	1st Quarter			2nd Quarter			3rd Quarter			4th Quarter		
		Target (Compl. + Add.)	Actual		Target (Compl. + Add.)	Actual		Target (Compl. + Add.)	Actual		Target (Compl. + Add.)	Actual	
			Compl.	Add.		Compl.	Add.		Compl.	Add.		Compl.	Add.
REGION I													
EPA	0	-	-	-	-	-	-	-	-	-	-	-	-
NPDES States	0	-	-	- ( )	-	-	- ( )	-	-	- ( )	-	-	- ( )
REGION II													
EPA	0	-	-	-	-	-	-	-	-	-	-	-	-
NPDES States	1	0	0	0 ( )	0	0	0 ( )	0	0	0 ( )	1	0	0 ( )
REGION III													
EPA	1	1	1	0	1	1	0	1	1	0	1	1	0
NPDES States	2	0	0	0 ( )	1	2	0 ( )	2	2	0 ( )	2	2	0 ( )
REGION IV													
EPA	5	0	0	0	1	1	0	2	1	0	5	2	3
NPDES States	5	1	0	0 ( )	1	0	0 ( )	4	3	0 ( )	5	4	1 ( )
REGION V													
EPA	-	-	-	-	-	-	-	-	-	-	-	-	-
NPDES States	3	1	2	0 ( )	2	2	0 ( )	3	2	1 ( )	3	2	1 ( )
REGION VI													
EPA	4	1	1	0	2	1	1	3	1	0	4	1	1
NPDES States	-	-	-	- ( )	-	-	- ( )	-	-	- ( )	-	-	- ( )

( ) Number of NOVs issued to NPDES States by EPA.

REDUCING THE NUMBER OF MAJOR FEDERAL FACILITIES IN SIGNIFICANT NONCOMPLIANCE WITH FEL

REGION	# Permittees in SNC with FEL As of 6/30/83	1st Quarter			2nd Quarter			3rd Quarter			4th Quarter		
		Target (Compl. + Add.)	Actual		Target (Compl. + Add.)	Actual		Target (Compl. + Add.)	Actual		Target (Compl. + Add.)	Actual	
			Compl.	Add.		Compl.	Add.		Compl.	Add.		Compl.	Add.
REGION VII													
EPA	-	-	-	-	-	-	-	-	-	-	-	-	-
NPDES States	0	-	-	- ( )	-	-	- ( )	-	-	- ( )	-	-	- ( )
REGION VIII													
EPA	1	1	1	0	1	1	0	1	1	0	1	1	0
NPDES States	1	0	0	0 ( )	0	0	0 ( )	0	0	0 ( )	1	0	1 ( )
REGION IX													
EPA	3	0	0	0	0	1	0	0	1	1	3	1	2
NPDES States	0	-	-	- ( )	-	-	- ( )	-	-	- ( )	-	-	- ( )
REGION X													
EPA	0	-	-	-	-	-	-	-	-	-	-	-	-
NPDES States	0	-	-	- ( )	-	-	- ( )	-	-	- ( )	-	-	- ( )
NATIONAL													
EPA	14	3	3	0	5	5	1	7	5	1	14	6	6
NPDES States	12	2	2	0 ( )	4	4	0 ( )	9	7	1 ( )	12	8	3 ( )
TOTAL	26	5	5	0 ( )	9	9	1 ( )	16	12	2 ( )	26	14	9 ( )

( ) Number of NOVs issued to NPDES States by EPA.

REDUCING THE NUMBER OF MAJOR FEDERAL FACILITIES IN SIGNIFICANT NONCOMPLIANCE WITH CS AND/OR IEL

REGION	# Permittees in SNC with FEL As of 6/30/83	1st Quarter			2nd Quarter			3rd Quarter			4th Quarter		
		Target (Compl. + Add.)	Actual		Target (Compl. + Add.)	Actual		Target (Compl. + Add.)	Actual		Target (Compl. + Add.)	Actual	
			Compl.	Add.		Compl.	Add.		Compl.	Add.		Compl.	Add.
REGION I													
EPA	0	-	-	-	-	-	-	-	-	-	-	-	-
NPDES States	0	-	-	- ( )	-	-	- ( )	-	-	- ( )	-	-	- ( )
REGION II													
EPA	0	-	-	-	-	-	-	-	-	-	-	-	-
NPDES States	1	0	0	0 ( )	0	0	0 ( )	0	0	0 ( )	1	1	0 ( )
REGION III													
EPA	0	-	-	-	-	-	-	-	-	-	-	-	-
NPDES States	0	-	-	- ( )	-	-	- ( )	-	-	- ( )	-	-	- ( )
REGION IV													
EPA	0	-	-	-	-	-	-	-	-	-	-	-	-
NPDES States	0	-	-	- ( )	-	-	- ( )	-	-	- ( )	-	-	- ( )
REGION V													
EPA	-	-	-	-	-	-	-	-	-	-	-	-	-
NPDES States	0	-	-	- ( )	-	-	- ( )	-	-	- ( )	-	-	- ( )
REGION VI													
EPA	0	-	-	-	-	-	-	-	-	-	-	-	-
NPDES States	-	-	-	- ( )	-	-	- ( )	-	-	- ( )	-	-	- ( )

( ) Number of NOVs issued to NPDES States by EPA.

REDUCING THE NUMBER OF
MAJOR FEDERAL FACILITIES IN SIGNIFICANT NONCOMPLIANCE WITH CS AND/OR IEL

REGION	# Permittees in SNC with FEL As of 6/30/83	1st Quarter			2nd Quarter			3rd Quarter			4th Quarter		
		Target (Compl. + Add.)	Actual Compl.	Actual Add.	Target (Compl. + Add.)	Actual Compl.	Actual Add.	Target (Compl. + Add.)	Actual Compl.	Actual Add.	Target (Compl. + Add.)	Actual Compl.	Actual Add.
REGION VII													
EPA	-	-	-	-	-	-	-	-	-	-	-	-	-
NPDES States	0	-	-	- ( )	-	-	- ( )	-	-	- ( )	-	-	- ( )
REGION VIII													
EPA	0	-	-	-	-	-	-	-	-	-	-	-	-
NPDES States	1	0	0	0 ( )	0	0	0 ( )	1	0	0 ( )	1	0	1 ( )
REGION IX													
EPA	0	-	-	-	-	-	-	-	-	-	-	-	-
NPDES States	2	0	0	0 ( )	0	0	0 ( )	0	0	0 ( )	2	0	1 (1)
REGION X													
EPA	0	-	-	-	-	-	-	-	-	-	-	-	-
NPDES States	0	-	-	- ( )	-	-	- ( )	-	-	- ( )	-	-	- ( )
NATIONAL													
EPA	0	-	-	-	-	-	-	-	-	-	-	-	-
NPDES States	4	0	0	0 ( )	0	0	0 ( )	1	0	0 ( )	4	1	2 (1)
TOTAL	4	0	0	0 ( )	0	0	0 ( )	1	0	0 ( )	4	1	2 (1)

( ) Number of NOVs issued to NPDES States by EPA.

MUNICIPAL PRETREATMENT

Region	#Municipalities Needing Approved Program As of 8/29/83	1st Quarter			2nd Quarter (Cumulative)			3rd Quarter (Cumulative)			4th Quarter (Cumulative)		
		Programs Approved		AOs Issued	Programs Approved		AOs Issued	Programs Approved		AOs Issued	Programs Approved		AOs Issue
		Target	Actual	Actual	Target	Actual	Actual	Target	Actual	Actual	Target	Actual	Actua
I													
EPA	65	3	3	6	6	4	9	12	7	12	30		12
NPDES States	–	–	–	–	–	–	–	–	–	–	–		–
II													
EPA	59	0	0	1	2	0	3	8	2	10	27		10
NPDES States	21	4	3	0	10	6	0	16	12	0	17		0
III													
EPA	201	6	3	21	36	9	32	76	22	60	121		60
NPDES States	8	0	0	2	8	0	2	8	1	2	8		6
IV													
EPA	60	2	3	8	5	4	18	7	6	21	14		27
NPDES States	169	12	16	0	34	29	3	80	40	3	123		9*
V													
EPA	150	1	1	2	7	7(5)	88	40	14	103	90		111
NPDES States	320	1	2	0	23	16(13)	108	60	31	108	142		108
VI													
EPA	110	24	21	11	39	40	29	54	62	41	69		53
NPDES States	-	–	–	–	–	–	–	–	–	–	–		–
VII													
EPA	13	4	4	0	5	5	0	6	6	1	10		4
NPDES States	52	9	9	0	15	15	0	23	18	1	34		5

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MUNICIPAL PRETREATMENT

Region	#Municipalities Needing Approved Program As of 8/29/83	1st Quarter			2nd Quarter (Cumulative)			3rd Quarter (Cumulative)			4th Quarter (Cumulative)		
		Programs Approved		AOs Issued	Programs Approved		AOs Issued	Programs Approved		AOs Issued	Programs Approved		AOs Issued
		Target	Actual	Actual	Target	Actual	Actual	Target	Actual	Actual	Target	Actual	Actual
VIII													
EPA	54	0	0	0	0	0	1	2	1	11	10		17
NPDES States	-	-	-	-	-	-	-	-	-	-	-		-
IX													
EPA	13	9	9	0	9	9	2	9	9	18	10		19
NPDES States	-	-	-	-	-	-	-	-	-	-	-		-
X													
EPA	16	0	0	0	12	6	0	15	10	0	16		1
NPDES States	3	2	2	0	2	2	0	2	3	0	3		0
NATIONAL													
EPA	741	49	44	49	121	84	182	229	139	277	397		314
NPDES States	573	28	52	2	92	68	113	189	105	114	327		128
TOTAL	1,314	77	76	51	213	152	295	418	244	391	724		442

* Data not yet complete for all States in Region IV.

W-9
W-10
W-17
W-18

COMPLETING MAJOR NON-MUNICIPAL CONSTRUCTION TO MEET 7/1/77 STATUTORY REQUIREMENTS

Region	# Needing Construction As of 6/30/83	Construction Completed	
		2nd Quarter	4th Quarter (Cumulative)
I	44	0	3
II	0	0	0
III	35	4	6
IV	0	0	0
V	22	14	14
VI	2	0	0
VII	0	0	0
VIII	1	0	0
IX	3	0	0
X	3	0	0
National	110	18	23

COMPLETING MAJOR MUNICIPAL CONSTRUCTION TO MEET 7/1/77 STATUTORY REQUIREMENTS

Region	# Needing Construction As of 6/30/83	Construction Completed	
		2nd Quarter	4th Quarter (Cumulative)
I	103	0	5
II	202	0	0
III	181	14	15
IV	268	42	42
V	247	3	6
VI	134	0	0
VII	71	0	3
VIII	27	6	6
IX	56	2	2
X	4	0	0
National	1293	67	79

W-48
W-49

MUNICIPAL PRETREATMENT

On the attached form, please provide, by Region and nationally, the actual number of municipal pretreatment programs approved and the actual number of administrative orders (containing schedules for submitting pretreatment programs) issued through the fourth quarter by EPA and by NPDES States with approved pretreatment programs.

COMMENTS:

FOURTH QUARTER SPMS REPORT

OCT 12 1984

W-1

NPDES DELEGATION

Please indicate below any NPDES program delegations and/or modifications completed during the third and fourth quarters and in which quarter they were completed.

COMMENTS:

NPDES Delegation - Rhode Island - Fourth Quarter

Pretreatment Delegation - Nebraska - Fourth Quarter

Federal Facility Delegation - North Carolina - Fourth Quarter

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NPDES PERMITS FOR NEW SOURCES/MAJOR NEW DISCHARGES

On the attached form, please provide, for each Region and nationally, the actual numbers of new source/major new discharger permits issued, the number of complete applications on hand, and the number of complete applications pending over twelve months at the end of the fourth quarter.

COMMENTS:

OCT 12 1984

MUNICIPAL PRETREATMENT

Region	#Municipalities Needing Approved Program As of 8/29/83	1st Quarter Programs Approved Target	1st Quarter Programs Approved Actual	1st Quarter AOs Issued Actual	2nd Quarter (Cumulative) Programs Approved Target	2nd Quarter (Cumulative) Programs Approved Actual	2nd Quarter (Cumulative) AOs Issued Actual	3rd Quarter (Cumulative) Programs Approved Target	3rd Quarter (Cumulative) Programs Approved Actual	3rd Quarter (Cumulative) AOs Issued Actual	4th Quarter (Cumulative) Programs Approved Target	4th Quarter (Cumulative) Programs Approved Actual	4th Quarter (Cumulative) AOs Issue Actua
I													
EPA	52	3	3	6	6	4	9	12	7	13	30	14	
NPDES States	13	-	-	-	-	-	-	-	-	-	-	7	
II													
EPA	57	0	0	1	2	0	3	8	2	10	27	27	
NPDES States	20	4	3	0	10	6	0	16	12	0	17	10*	
III													
EPA	136	6	3	21	36	9	32	76	22	60	121	56	
NPDES States	8	0	0	2	8	0	2	8	1	2	8	1	
IV													
EPA	14	2	3	8	5	4	18	7	6	21	14	14	
NPDES States	222	12	16	0	34	29	3	80	40	3	123	91	
V													
EPA	120	1	1	2	7	7(5)	88	40	14	103	90	14	
NPDES States	286	1	2	0	23	16(13)	122	60	31	110	142	34	
VI													
EPA	112	24	21	11	39	40	29	54	62	41	69	70	
NPDES States	-	-	-	-	-	-	-	-	-	-	-	-	
VII													
EPA	11	4	4	0	5	5	0	6	6	1	10	11	
NPDES States	41	9	9	0	15	15	0	23	18	1	34	33	

( ) = Of the total number of programs measured against target, these numbers represent POTWs that have been notified in writing that the program meets approval requirements and will be approved after public notice of pretreatment program and permit modification.

* The third quarter number of 12 was reported incorrectly, the number should have been 9.

MUNICIPAL PRETREATMENT

Region	#Municipalities Needing Approved Program As of 8/29/83	1st Quarter			2nd Quarter (Cumulative)			3rd Quarter (Cumulative)			4th Quarter (Cumulative)		
		Programs Approved		AOs Issued	Programs Approved		AOs Issued	Programs Approved		AOs Issued	Programs Approved		AOs Issued
		Target	Actual	Actual	Target	Actual	Actual	Target	Actual	Actual	Target	Actual	Actual
VIII													
EPA	42	0	0	0	0	0	1	2	1	11	10	2	
NPDES States	-	-	-	-	-	-	-	-	-	-	-	-	
IX													
EPA	13	9	9	0	9	9	2	9	9	18	10	10	
NPDES States	1	-	-	-	-	-	2	-	-	2	-	1	
X													
EPA	16	0	0	0	12	6	0	15	10	0	16	11	
NPDES States	3	2	2	0	2	2	0	2	3	0	3	3	
NATIONAL													
EPA	573	49	44	49	121	84	182	229	139	278	397	229	
NPDES States	592	28	52	2	92	68	129	189	105	118	327	180	
TOTAL	1,165	77	76	51	213	152	311	418	244	396	724	409	

OCT 12 1984

NPDES PERMITS FOR NEW SOURCES/MAJOR NEW DISCHARGERS (EPA ONLY)

Region	10/1/83 Baseline	1st Quarter			2nd Quarter (Cumulative)			3rd Quarter (Cumulative)			4th Quarter (Cumulative)		
		Issued	On Hand	Pending Over 12 Mos.	Issued	On Hand	Pending Over 12 Mos.	Issued	On Hand	Pending Over 12 Mos.	Issued	On Hand	Pending Over 12 Mos.
I	2 (0)	2	1	0	3	0	0	3	3	0	3	2	0
II	0 (0)	0	2	0	0	2	0	0	2	0	2	0	0
III	0 (0)	0	0	0	0	0	0	0	0	0	0	0	0
IV	2 (0)	0	4	1	1	13	2	4	9	2	13	0	0
V	DELEGATED	-	-	-	-	-	-	-	-	-	-	-	-
VI	26 (9)	12	30	6	32	90	10	38	37*	8	49	38	4
VII	DELEGATED	-	-	-	-	-	-	-	-	-	-	-	-
VIII	0 (0)	0	0	0	0	0	0	0	0	0	1	0	0
IX	0 (0)	0	0	0	0	1	0	0	1	0	0	1	0
X	186 (160)	3	188	160	3	194	174	82	179	163	88	174**	168
National	216 (169)	17	225	167	39	300	186	127	231	173	156	215	172

() Number of complete applications pending more than 12 months.

*The number of applications decreased because the second quarter number included minor new dischargers which are not tracked in SPMS. The third quarter number was adjusted to reflect only new sources and major new dischargers.

**45 will be cancelled and removed from PCS and 120 will be covered by the seafood general permit.

W-38
W-39
W-40
W-41

NPDES NON-MUNICIPAL PERMITS

On the attached form, please provide, by Region and nationally, the actual cumulative number of major non-municipal permits reissued by EPA and the number reissued by NPDES States through the fourth quarter.

COMMENTS:

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W-41

NPDES NON-MUNICIPAL PERMITS

Region	#Expired By		1st Quarter	2nd Quarter (Cumulative)	3rd Quarter (Cumulative)	4th Quarter (Cumulative)	EOY Target
	EOY 83	84					
I							
EPA	114	120	6	14	27	63	60
NPDES States	31	61	4	7	7	13	-
II							
EPA	27	29	7	13	15	20	28
NPDES States	318	341	1	2	11	47	-
III							
EPA	4	4	4	4	4	4	4
NPDES States	288	297	1	13	34	77	-
IV							
EPA	43	58	5	14	17	59	60
NPDES States	292	330	31	74	106	196	-
V							
EPA	0	0	0	0	0	0	0
NPDES States	482	526	13	36	52	128	-
VI							
EPA	213	240	7	23	46	133	130
NPDES States	0	0	0	0	0	0	..
VII							
EPA	0	0	0	0	0	0	0
NPDES States	20	24	2	3	8	15	-
VIII							
EPA	3	4	0	1	2	4	4
NPDES States	23	26	3	4	10	11	-
IX							
EPA	6	7	0	0	1	5	5
NPDES States	64	78	3	7	15	21	-
X							
EPA	97	148	13	15	77	137	93
NPDES States	56	60	1	2	3	19	-
NATIONAL							
EPA	507	610	42	84	189	425	384
NPDES States	1574	1743	59	148	246	527	-
Total	2081	2353	101	232	435	952	

W-42
W-43
W-44
W-45

NPDES MUNICIPAL PERMITS

On the attached form, please provide, by Region and nationally, the actual cumulative number of major municipal permits reissued by EPA and the number reissued by NPDES States through the fourth quarter.

COMMENTS:

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W-43
W-44
W-45

NPDES MUNICIPAL PERMITS

Region	#Expired By EOY 83	84	1st Quarter	2nd Quarter (Cumulative)	3rd Quarter (Cumulative)	4th Quarter (Cumulative)	EOY Target
I							
EPA	74	110	7	21	41	54	54
NPDES States	27	34	1	3	6	9	-
II							
EPA	11	11	0	0	0	2	5
NPDES States	193	260	1	1	2	26	-
III							
EPA	1	1	0	0	0	0	0
NPDES States	88	118	2	9	22	45	-
IV							
EPA	70	77	0	8	41	74	60
NPDES States	81	133	9	35	82	150	-
V							
EPA	0	0	0	0	0	0	0
NPDES States	220	341	24	37	50	112	-
VI							
EPA	44	76	4	21	49	64	40
NPDES States	0	0	0	0	0	0	-
VII							
EPA	0	0	0	0	0	0	0
NPDES States	27	68	8	19	23	34	-
VIII							
EPA	6	30	0	7	13	15	30
NPDES States	23	53	9	15	26	39	-
IX							
EPA	10	13	0	1	2	3	4
NPDES States	29	91	4	13	20	43	-
X							
EPA	8	17	3	3	6	8	8
NPDES States	29	41	0	2	3	7	-
NATIONAL							
EPA	224	335	14	61	152	220	201
NPDES States	717	1139	58	134	234	465	-
Total	941	1474	72	195	386	685	

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OFFICE OF
WATER

AUG 9 1984

SUBJECT: FY 1984 NPDES Management Review Findings

Rebecca Hanmer

FROM: Rebecca W. Hanmer, Director
Office of Water Enforcement and Permits

TO: David Fierra, Director
Water Management Division, Region I

Attached is our final report from the NPDES Management Review we conducted in April. It contains our assessment of the Region's NPDES program and our recommendations for ways to improve the program. It also reflects your responses to our recommendations, as well as your commitments for follow-up action. We will be following your progress through our established management reporting systems, but we would like to hear from you in the meantime if you have results that are particularly noteworthy.

I want to express my personal appreciation to you and your staff for your cooperation throughout the review process. I trust that our recommendations will be useful to you, and will help strengthen the NPDES program in your Region.

Attachment

cc: Paul Keough, DRA

REGION I

Office of Water Enforcement and Permits
NPDES Management Review Findings
April 1984

PERMIT ISSUANCE:

Strengths: The Region has a very good permit issuance program, which makes good use of resources and has clear, well-understood organizational responsibilities. The Region expects to meet all major permit issuance commitments in FY 1984, and to issue substantially all major expired permits by the end of FY 1985. In the meantime, the Region is also beginning to address the backlog of unissued permits for minor dischargers that have filed applications, which is commendable in light of the recent GAO Report that highlighted the minor permit backlog as a national problem. Finally, the Headquarters permit quality review team has rated the Region first among those Regions visited thus far because it consistently issues high quality permits.

Concerns: Many of the Region's municipal permits that are due for reissuance will need water quality based limits for conventionals and toxics. This will require significant levels of support to the permit writers from other areas in the WMD in order to avoid delays in permit issuance. Similarly, support to conduct NEPA reviews on NSPS permits will be needed and should be factored into the Region's planning.

PRETREATMENT (Local Program Approvals):

Strengths: The Region has renewed its emphasis on pretreatment. In addition, the Region is making a good start on evaluating approved local programs by conducting an audit of the Boston MDC, which is the largest, most complex pretreatment program in the Region.

Concerns: Region I, like all the other EPA Regions, has limited resources and staffing levels for its pretreatment activities, which has contributed to difficulties in properly implementing the pretreatment program. The Region made a somewhat late start in working closely with its localities, and it is unlikely that it will meet its FY 1984 commitment for local pretreatment program approvals. At the end of the third quarter, for example, only seven local programs had been approved against the Region's target of twelve. Even if the Region meets its FY 1984 commitment of thirty local program approvals, there will be thirty-five POTW programs still needing approval.

The Region has received a number of inadequate program submittals from local POTWs that indicate lack of knowledge and understanding of the requirements of the General Pretreatment Regulations. This situation could be improved through better communication with both POTWs and regulated industries about the pretreatment requirements. There also appeared to be some questions among Regional personnel about what constitutes an approvable local program, which had impeded effective response to POTWs. OWEP has responded to this need by developing draft guidance, which is now being put into final form. OWEP has also offered to conduct a training meeting with Regional staff and possibly POTWs to assist the Region's local program approval efforts.

National policy and guidance have emphasized the need for vigorous action to obtain complete and approvable local programs by September 30, 1984, including enforcement action where necessary. The recent press release issued by the Region identifying 44 communities that needed to take some action in order to complete their local programs has apparently evoked a promising level of response from towns. In view of the substantial delays in POTW local program submittals to meet the regulatory requirements, the Region needs to follow up vigorously on this initiative and to accelerate its assessment of POTW referral needs for the remainder of FY 1984 and for FY 1985 and to initiate case preparation.

ENFORCEMENT ACTIONS:

Strengths: The Region is attaining its quarterly goals for improving compliance and taking enforcement actions, and expects to meet its annual goals as well. There appears to be a very good working relationship between the ORC and the WMD.

Concerns: The Region rarely takes enforcement action in approved States if the State fails to initiate timely and appropriate enforcement action. The Region cites the generally good compliance rates in the States of Connecticut and Vermont as its justification for deferring to the States. OWEP recommended that the Region use the criteria in the newly-issued "National Guidance on Oversight of NPDES

Programs" to establish enforcement agreements with its approved States, and we understand that negotiations are well underway. Implementation of the criteria for timely and appropriate enforcement response should resolve this general issue. In addition, the current data show that there are instances of significant noncompliance that have not received any State action. To address this, the Region agreed to take action by June 30, 1984, in all cases on the fixed base tracking list where the State had failed to take an action.

In a number of cases, the Region relies on unapproved States to take enforcement actions against permit violations. Where the Region relies on a State enforcement action in an unapproved State in lieu of a Federal action, it must ensure that: 1) the State enforcement action is equivalent to or better than a Federal action; and 2) the State permit requirements that are being enforced are equivalent to or more stringent than the requirements in the EPA permit. We understand that the Reegion agrees with this approach.

Region I has set some interim limits in AOs that appear to be unrealistic for the permittee to attain consistently. As a result, the permittee may remain in noncompliance until construction is completed, which may be years later. If the Region does not pursue AO violations or refer these cases, there is little incentive for the permittee to meet the requirements in the AO. The Region responded that its approach was appropriate because of the need to maximize O&M at a POTW during the construction grants process. While this is a laudable aim, we urge the Region to reexamine its overall policy on issuing AOs in order to determine whether the orders are actually achieving effective compliance, or whether, in some cases, the Region should be preparing referrals or changing the interim limits and requiring more direct O&M measures and periodic O&M reports from the permittee.

Finally, many of the Region's permits contain seasonal limits that are necessary to meet summer water quality requirements. In order to assure that a treatment unit is working and is capable of handling summer loads, these seasonal limits become effective in the spring. When these limits are violated in the spring, the Region does not initiate enforcement because the requirement for the additional treatment is actually only needed in the late summer. As a result, many permittees violate seasonal limits each spring without enforcement follow-up by the Region. The Region should require treatment units to be in operation in the spring, but should consider not imposing effluent limitations until the summer when they are meant to be enforced. The Region has indicated that it will implement this recommendation in future permits.

COMPLIANCE REVIEW AND ENFORCEMENT PROCESS:

Strengths: The Compliance Section operates well on the basis of its experience with the program, and there is good management oversight of activities at the section level. The Region has established a good working relationship with the ESD and with its technical counterparts in the States. The ORC, with substantial support from the WMD, prepares very good water enforcement referrals, and the Region's litigation reports are of uniformly high quality and address appropriate facilities.

Concerns: While the Region operates within the general spirit of the EPA Enforcement Management System (EMS), its guidance is not current. The new compliance staff in the WMD need current written procedures to guide their decisions in order to assure consistent technical evaluations; the procedures should outline the process for documenting the decisions made during the quarterly compliance follow-up meetings with the States. In addition, the ORC is not familiar with or involved in the Regional EMS procedures. These problems are not unique to Region I, and the Region's efforts to update its procedures should parallel Headquarters' efforts to revise the national EMS.

The Region also needs to develop a more systematic method for selecting its referrals. OWEP understands that a set of referral criteria has been prepared, and would appreciate receiving the criteria that have been developed. Headquarters is prepared to assist the Region in this area if so requested.

Although the Region has been holding quarterly compliance review meetings with its States to discuss violations and technical/legal solutions, the decisions on compliance and enforcement follow-up were rarely documented or reviewed by either the Region or the State and the commitments were not tracked formally. While the fixed-base concept had led to some improvement, the determination of "returned to compliance" generally proceeded on a very informal basis, with the States taking the lead. In order to establish a strong enforcement presence, OWEP recommended that the Region document any action plans resulting from the quarterly meetings and have these decisions reviewed at the Branch level and sent to the States so that all parties understand who is responsible for what and when. This would provide the Region with a better basis for tracking enforcement activity and for triggering EPA action if necessary. We understand that the Region is now documenting its quarterly meetings with its States.

PCS/RECORDKEEPING:

Strengths: The Region is a pilot for generating the QNCR from PCS, and the results have been good due to the Region's entering high-quality data into the system.

Concerns: The DMR data are not entered into PCS for the approved States of Connecticut and Vermont, and the QNCR from the State of Connecticut is not prepared according to Federal requirements and does not contain sufficient information to evaluate the NPDES program. Without the appropriate DMR or PCS data from approved States, the Region is not able to verify the QNCR or to maintain oversight of its approved States except through file audits. The Region has indicated that it is working with the States of Connecticut and Vermont, and should have both States' data in PCS by the end of FY 1985. Headquarters will work with the Region on its request for increased contractor support to complete this effort.

INSPECTIONS:

Strengths: The Region has a good inspection program that involves effective coordination between the WMD and the ESD, as well as a high degree of planning and interaction with the States. The Region is meeting or exceeding its inspection commitments, and the WMD enters all compliance inspection data into PCS. The Region is also using Compliance Biomonitoring to support the Water Quality-based Permit Policy, and places emphasis on POTW O&M inspections to achieve improved municipal compliance.

Concerns: Inspection data are being entered into PCS before the inspection reports are completed, which reduces the incentive for ESD to finish the reports; the Region has agreed to avoid PCS entry of the data until the reports are complete. In response to the Region's (and other) comments concerning SPMS credit for inspections, OWEP will resolve this issue with OMSE and OECM prior to FY 1985.

In addition, ESD has been asked to complete a RCRA checklist during each NPDES inspection, and, according to ESD, the allocated RCRA resources are not adequate to cover this activity; in effect, it appears that NPDES inspection resources are being used to support RCRA activities. Finally, the Water Division needs to coordinate better with the ESD on notification of permittees who fail to respond to DMR QA requests.

STATE PROGRAM APPROVALS:

Strengths: The Region continues to pursue program approval aggressively, and is making good progress on approval of good programs in the States of Massachusetts and Rhode Island. The Region's efforts have also resulted in progress with the State of Maine, thereby laying a foundation for future program approval. Throughout the program approval process, there is close and active coordination between the WMD and the ORC.

Concerns: Although it appears unlikely that the Region will meet its commitment to approve the NPDES program for the State of Massachusetts this fiscal year, Headquarters agrees that the delay may be necessary to improve the quality of the submission and the ultimate approval. At the time of the review, the Region was encouraged to involve Headquarters in meeting directly with the States earlier in the program approval process in order to minimize problems and confusion in the final stages of program approval. We are pleased that the Region acted on this request with respect to Rhode Island, and we are optimistic about early approval of that program.

STATE OVERSIGHT:

Strengths: Regional oversight of approved State programs, which was criticized in last year's OW evaluation, has improved. Although the State of Connecticut had previously demonstrated an unwillingness to make necessary changes in its NPDES program, the Region's accelerated efforts appear to have persuaded the State to correct the deficiencies in its legal authorities. Oversight of State enforcement activities has increased significantly since FY 1983, and the Region now meets with the States at least quarterly to review QNCR violations and to negotiate Regional and State responsibilities for enforcement follow-up and inspections.

Concerns: While State oversight has improved since last year, the Region needs to continue to expand its oversight activities for permit issuance, the pretreatment program, and enforcement. In particular, the Region continues to experience problems with the State of Connecticut, which is lagging behind in permit issuance, has failed to submit its list of priority permits for reissuance this fiscal year, and fails to follow the Federal requirements for noncompliance reporting. Upper level management support should continue to be exerted to require the State of Connecticut to provide the Region with an expeditious schedule for completing its regulations and issuing permits, and to supply complete and accurate information on permittee noncompliance and steps to correct the noncompliance. The Region should also plan to conduct a detailed audit of the State's pretreatment program in FY 1985.

SPECIAL ISSUES:

Boston Harbor: Although the ORC and the WMD are monitoring a compliance schedule for Boston Harbor, the Region should develop its own comprehensive compliance and enforcement strategy for the Harbor. In addition, the Region needs to follow up to assure that Boston MDC includes specific BAT limits in its permits for indirect dischargers rather than the general narrative that appears in most of Boston's existing permits.

HEADQUARTERS FOLLOW-UP:

Permit Issuance: OWEP will work with the Region on how to approach facilities for which permit limits based on water quality may be unachievable without shutdown of the facility; and work with OWPO on guidance for technology-based (BPT) limits for combined sewer overflows. Headquarters already resolved the issues on the major list with respect to Ten Mile Run and Connecticut facilities.

Pretreatment: OWEP will continue to seek adequate staffing and extramural support for program implementation. OWEP has offered to meet with the Region to discuss and clarify some of the approvability issues, and will also address the Region's concern about possible "conditional approvals" as part of its national effort in this area. Finally, OWEP will respond to the Region's request for guidance on setting deadlines for local program submittals where permits requiring program development are written after July 1983.

Inspections: OWEP will inquire about the use of the RCRA checklist in other Regions, and, if the practice is causing a resource problem for the NPDES program, will discuss the problem with the RCRA program. OWEP will also publish a consolidated Compliance Inspection Manual and a streamlined inspection form, and has requested expedited promulgation of §304(h) methods by ORD.

State Program Approvals: With respect to specific program approvals, OWEP will consult with OGC on the issue of criminal self-incrimination in Massachusetts. In reviewing State submissions, OWEP will distinguish clearly between comments that are substantive and important and those that are merely informative. OWEP will also exchange preliminary drafts of comments with the Region in advance.

State Oversight: OWEP will work closely with the Region regarding the State of Connecticut's program issues and the State's drafting of regulations.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OFFICE OF
WATER

SEP 10 1984

MEMORANDUM

SUBJECT: FY 1984 NPDES Management Review Findings

FROM: Rebecca Hanmer
Rebecca W. Hanmer, Director
Office of Water Enforcement and Permits

TO: William Muszynski, Director
Water Management Division, Region II

Attached is our final report from the NPDES Management Review we conducted in June. It contains our assessment of the Region's NPDES program and our recommendations for ways to improve the program. It also reflects your responses to our recommendations, as well as your commitments for follow-up action. We will be following your progress through our established management reporting systems, but we would like to hear from you in the meantime if you have results that are particularly noteworthy.

I want to express my personal appreciation to you and your staff for your cooperation throughout the review process. I trust that our recommendations will be useful to you, and will help strengthen the NPDES program in your Region.

Attachment

cc: Richard T. Dewling, DRA
Douglas R. Blazey, RC
Glenn Unterberger, Acting Associate
Enforcement Counsel for Water Enforcement

REGION II
Office of Water Enforcement and Permits
NPDES Management Review Findings
June 1984

PERMIT ISSUANCE:

Strengths: The Region expects to meet its FY 1984 commitment for issuance of major permits in Puerto Rico, and to eliminate the backlog of expired permits there by the end of FY 1985. The Region provides its NPDES States with direct assistance in drafting permits, arranges for contractor assistance and training for State permit writers, and is preparing to make innovative use of general permits to cover certain categories of previously unpermitted minor dischargers. Both the Region and the State of New York use biomonitoring and water quality based permitting to address toxic discharges.

Concerns: The States of New York and New Jersey have serious problems with permit issuance. In the State of New Jersey, for example, there are problems with both quality of State draft permits, which require extensive EPA review and comment, and with the State's rate of permit issuance, which is unacceptably low--especially given the amount of Federal aid and EPA contractor assistance being provided.

In the State of New York, permit quality appears to be relatively good and issuance rates seem to be improving; however, the State has an extremely high backlog of expired major permits and has problems issuing timely permits due to extended negotiations that occur between public notice and final issuance of permits. Copies of new and modified permits are not always provided to EPA for comment, or, in some cases, even after issuance.

The Region also has a backlog of unresolved evidentiary hearing requests, which need to be addressed so that the challenged provisions can become effective. Headquarters recommended that the WMD and the ORC place higher priority on this effort, especially since denial of the requests seemed to be appropriate in most cases. The Region responded that the WMD and the ORC have committed to eliminate all the less complex denials and permit modifications by the end of FY 1984. Finally, the Water Management Division needs to examine its current distribution of Regional permit issuance resources, and to consider reallocating these resources to the essential activities of State permitting and oversight.

PRETREATMENT:

Strengths: The Region expects to meet its FY 1984 commitment for local program approvals. The Region has established a strong working relationship with the State of New York, which provides extensive support even though the State is not approved to administer the pretreatment program. In addition, the Region has been successful in its use of contractor assistance to catalog, review, and respond to the Baseline Monitoring Reports for the electroplating industry.

Concerns (Local Program Approvals): The Region plans to let the State of New York review all its local program submittals. Since EPA remains legally responsible for these programs until such time as the State formally assumes responsibility for the pretreatment program, the Region needs to continue to be actively involved in the review and approval of all submittals. In addition, the approved State of New Jersey is lagging behind its FY 1984 commitment for program approvals. The Region needs to press the State for high quality submittals, and to track the State's progress in issuing permits to the 250 most significant indirect dischargers in New Jersey, who are apparently unregulated under the State's pretreatment program until the permits are issued.

Even if the Region meets its FY 1984 commitment for approving local programs, there will be approximately thirty-six required POTW programs still needing approval. National policy and guidance has emphasized the need for vigorous action to obtain complete and approvable local programs by September 30, 1984, including enforcement action where necessary. It appears that the Region will not meet this goal. In view of the substantial delays in POTW local program submittals to meet the regulatory requirements, Headquarters recommended that the Region accelerate its assessment of POTW referral needs for the remainder of FY 1984 and for FY 1985 and to initiate case preparation. The Region indicated that it has developed and implemented a plan to accomplish this.

Concerns (Enforcement of Categorical Standards): The State of New Jersey has apparently issued AOs to electroplaters to extend the April and June 1984 compliance deadlines without expeditious compliance schedules and without penalties. This is a substantially inadequate enforcement response. These administrative orders were apparently issued to electroplaters planning to tie into a proposed centralized waste treatment facility to be constructed and operated by the Port Authority of New York/New Jersey at an indefinite time in the future. Region II and New Jersey need to agree immediately on a more appropriate enforcement approach; at a minimum, the State enforcement actions must provide for expeditious final compliance by a date certain, and, where extended deadlines are allowed, should incorporate appropriate administrative penalties to offset economic benefits of noncompliance and to encourage prompt remedial action. In addition, enforcement orders should identify interim steps to be taken by electroplaters to minimize discharge of metals to the receiving POTWs in violation of the limits in the categorical standards.

ENFORCEMENT ACTIONS:

Strengths: By the end of the third quarter, the Region had prepared as many referrals and had issued as many NOVs as in the whole of FY 1983, and had exceeded the number of AOs issued last fiscal year; the Region is also doing well on its fixed base facilities. The Region's Significant Noncompliance Action Plan (SNAP) provides an opportunity for the Region and its States to establish roles and responsibilties for enforcement actions, and has helped focus State attention on the fixed base list of noncompliers. Finally, the Region's litigation packages are well written and well documented, and the ORC staff are experienced and enthusiatic. There are regular meetings between the WMD and the ORC to discuss the status of current cases as well as potential new referrals. Overall, there appears to be improved coodination between the ORC and the WMD since the Office of Water FY 1983 mid-year evaluation.

Concerns: The Region's responses to instances of noncompliance have occasionally been inadequate or inappropriate. For example, in some instances, the Region has issued an AO that provides the discharger with interim limits for the life of its permit. In addition, both the States of New Jersey and New York have modified permits to resolve noncompliance; in some cases, these permits have been modified within six months of their issuance. While these actions may have been appropriate in isolated cases, they raise obvious issues about permit quality and/or enforcement response and should be carefully scrutinized.

The Region uses "Show Cause Orders" and administrative consent orders that contain stipulated penalties in a manner different from other Regions. Headquarters is examining these orders as part of a broader review of administrative enforcement practices and will provide further guidance by the end of the fiscal year.

Finally, while coordination between the ORC and the WMD is improved, the ORC often becomes involved in enforcement cases late in the process and finds itself confined by the decisions already made by the technical staff. The Region should further improve communication between the WMD and the ORC in the earlier stages of the case development process.

COMPLIANCE REVIEW AND ENFORCEMENT PROCESS:

Strengths: The Region has done a good job of getting the States of New Jersey and New York to commit to converting to PCS. In addition, the Region recently converted its automated system to PCS, the WMD seems strongly committed to using the system as a management tool, and the Information Systems Branch has many special software packages designed to analyze the data. The Region's permit files are maintained by a contractor, and are generally complete and readily accessible to the staff and to the public.

The WMD selects the candidates for and types of EPA inspections, and the ESD provides effective support and is responsive to specific requests for enforcement case support. The ESD also coordinates the DMR QA program for the Region, and uses the study results to target problem facilities for PAIs. In addition, the Region uses biomonitoring extensively, and is currently negotiating an enforcement order containing biomonitoring procedures.

Finally, both the States of New York and New Jersey have submitted strategies under the National Municipal Policy (NMP), including an inventory of facilities by category.

Concerns: Headquarters expressed concern that the State of New Jersey was making very slow progress in converting to PCS, and that the State of New York was not yet entering its DMR data into the system. The Region responded that the State of New Jersey has committed to be on the system by the beginning of FY 1985, and that the State of New York is on schedule. Overall, the quality of the data in PCS is poor.

At the time of the review, the Region was well behind its FY 1984 commitment for inspections. Following the review, the Region made tremendous progress and reported that it expected to meet or exceed its annual commitment. In addition, inspection data are being entered into PCS before the final reports are completed, which serves as a disincentive to the timely completion of the final reports. The WMD agreed to investigate this problem and to ensure that PCS data reflect complete, final reports.

In addition, although the Region has the in-house expertise, it uses a contractor to perform all diagnostic inspections. Since O&M is a major cause of municipal noncompliance, Headquarters continues to recommend that the Region augment the work of the contractor by performing some of its own diagnostic inspections so it has the information to determine what a reasonable remedy would be for a non-complying facility. Finally, while the ESD has proposed dropping the State of New Jersey from the DMR QA program because it has a superior lab certification program, the Region was cautioned against this and was asked to explore several alternatives with the State.

STATE PROGRAM APPROVALS:

Concerns: While the State of New York has been participating in the pretreatment program extensively for some time, it now plans to defer formal program assumption until April 1986. The Region thinks the State is capable of performing all local program review functions in the meantime, but this is not a true State program approval arrangement. The State of New York appears to be ready to assume the pretreatment program no later than FY 1985, and the Region should continue to press for full program assumption earlier than the projected April 1986 date.

The Region also needs to conduct a complete review of the legal and regulatory authorities in the NPDES program in the State of New York; that program has not undergone a comprehensive review since its original approval, and is the Region's leading candidate for a complete program review in early FY 1985.

The Virgin Islands NPDES program continues to be a concern, especially its limited ability to draft and issue NPDES permits and to carry out its responsibilities as an approved program.

STATE OVERSIGHT:

Strengths: The Region's oversight of compliance and enforcement activities in its approved States has improved substantially since the Office of Water mid-year review last year. For example, as noted earlier, the Region now has an aggressive plan to resolve issues related to noncompliance in the approved States of New York and New Jersey: the Significant Noncompliance Action Plan (SNAP), which is now serving as a model for all Regions under the new "National Guidance for Oversight of NPDES Programs." In addition, the Region uses its §106 work plans to define State performance expectations, and conducts detailed evaluations of State programs twice each fiscal year. These practices have produced significant changes, especially in the State of New York where the State has improved the quality of its QNCRs, its inspections and its enforcement responses.

Concerns: While the State of New Jersey appears to have sound statutes and regulations, its performance levels in drafting permits, making timely referrals and preparing accurate and timely QNCRs indicate that Federal resources are not being used productively. The Region needs to increase its oversight of both the New Jersey NPDES and pretreatment programs (including both direct dischargers and significant indirect dischargers), and should conduct a detailed audit of the permit program immediately to determine why, with the State's current staffing levels and extensive assistance from EPA, permit issuance rates and permit quality continue to be a problem. This audit should be completed before any determination is made as to the level of EPA assistance to be provided in FY 1985.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON D.C. 20460

OFFICE OF
WATER

AUG 31 1984

MEMORANDUM

SUBJECT: FY 1984 NPDES Management Review Findings

Rebecca Hanmer

FROM: Rebecca W. Hanmer, Director
Office of Water Enforcement and Permits

TO: Greene A. Jones, Director
Water Management Division, Region III

Attached is our final report from the NPDES Management Review we conducted in June. It contains our assessment of the Region's NPDES program and our recommendations for ways to improve the program. It also reflects your responses to our recommendations, as well as your commitments for follow-up action. We will be following your progress through our established management reporting systems, but we would like to hear from you in the meantime if you have results that are particularly noteworthy.

I want to express my personal appreciation to you and your staff for your cooperation throughout the review process. I trust that our recommendations will be useful to you, and will help strengthen the NPDES program in your Region.

Attachment

cc: Stan Laskowski, DRA
Sheldon Novick, RC
Glenn Unterberger, Acting Associate
Enforcement Counsel for Water Enforcement

REGION III

Office of Water Enforcement and Permits
NPDES Management Review Findings
June 1984

PERMIT ISSUANCE:

Strengths: The Region is to be commended for its plan to use the §106 program planning process to obtain State commitments to eliminate the permit backlog. Thus far, the State of Delaware has already eliminated its major municipal and major industrial permit backlogs, Maryland is committed to reissue all its major permits by the end of FY 1984, and the State of Virginia is committed to complete its work by the end of FY 1985 consistent with national policy.

Concerns: The State of Pennsylvania is not adequately addressing its major permit backlog, and is not expected to complete the task by the end of FY 1985; continued personal involvement of the Region's senior management will be necessary to oversee the efforts in the State of Pennsylvania. The Region will also have to continue to press the States other than Delaware to ensure that they eliminate their major permit backlogs by the end of FY 1985. Finally, the Region had difficulty in obtaining meaningful and timely permit priority lists from its States in FY 1984, and needs to place renewed emphasis on receiving these lists in the coming fiscal year.

PRETREATMENT (Local Program Approvals):

Strengths: Strong support and interest by the Water Division has produced a significant increase in activity in the pretreatment program. The Region's use of a task force has also helped to accelerate the implementation process.

Concerns: In spite of the increased activity, the Region will not meet its FY 1984 commitments for local program approvals and remains well behind the national approval rate. In addition, the NPDES States are not modifying municipal permits to incorporate requirements for local program development and submission. Finally, the Region needs to begin to institutionalize the work that has been done by its task force. That group has provided sound, immediate solutions, but, after the program approvals are completed in early FY 1985, use of the existing, formal organizational structure will be more effective.

PRETREATMENT ENFORCEMENT:

Strengths: The Region is recently active in its use of both formal and informal enforcement actions to require local program submittals. The Region also is to be commended for its surveillance of and enforcement against industrial users: it is using contractor assistance to review BMRs and to follow-up on potential noncompliers and is planning to submit two judicial referrals (one against a POTW with a joint complaint against the industrial user for causing the POTW to violate its permit, and a second against an industrial user for noncompliance with categorial standards). Two additional referrals are also under consideration.

Concerns: The Region's current workload will be further exacerbated in FY 1985 if it has to assume responsibility for pretreatment enforcement in its unapproved States.

ENFORCEMENT ACTIONS:

Strengths: The Region is doing well against the fixed base of noncompliers. It has met or exceeded its commitments thus far for municipals, non-municipals, and Federal facilities, and is to be commended for its intensive efforts to validate the original fixed-base list. In addition, the ORC consistently prepares well-written and well-documented litigation reports, pleadings and referral packages. In contrast to last year, the ORC and the WD appear to coordinate closely their enforcement efforts through weekly (branch level) and monthly meetings (RC, WDD, and DRA) to discuss referral candidates prior to preparing detailed technical support documents and case development plans. The recent referral against the Blue Plains facility in Washington, D.C., demonstrates very effective coordination in a highly complex enforcement action.

Concerns: Given the high rates of noncompliance in its approved States, combined with the organizational problems, lack of State cooperation, and the frequently inadequate State enforcement responses, the Region needs to be more aggressive in taking direct Federal enforcement action. For example, the State of Virginia apparently issues administrative consent orders that merely extend compliance schedules and do not call for expeditious compliance by a date certain; moreover, the State seems to focus its enforcement efforts exclusively on POTWs, but has not yet delivered a final State strategy and inventory under the NMP and does not appear to be committed to enforcing the 1988 deadline consistent with national policy. The State of West Virginia conducts a substantial number of compliance evaluation inspections, but does little or no enforcement follow-up; like the State of Virginia, West Virginia's commitment to the 1988 deadline is questionable. The State of Pennsylvania does not seem to cooperate with the Region, and, at the time of the review, had not delivered a draft NMP strategy (which was due April 1, 1984) and had taken only a few enforcement actions against fixed-base facilities; the State also has a very decentralized organizational structure and a large number of major permittees. The State of Maryland needs better control over its water pollution control structure, which consists of four separate offices; the State also seems to concentrate its enforcement efforts on hazardous waste sites while neglecting NPDES enforcement. Given the serious and pervasive nature of these problems, the Region should ensure that its approved States adhere closely to the timelines in the new "National Guidance for Oversight of NPDES Programs," and should initiate Federal enforcement actions in approved States consistent with the guidelines in that document.

COMPLIANCE REVIEW AND ENFORCEMENT PROCESS:

Strengths: The Region appears to be adopting a more aggressive posture towards its States with respect to data verification and compliance follow-up. The Region is working on an updated EMS, and has issued guidelines for staff review of QNCRs, State NMP strategies, and annual State program planning documents. The Region also has developed a detailed compliance management flow chart that shows roles and responsibilities for the WD and the ORC, and includes time frames for action. This is supplemented by an enforcement action tracking system.

The Region manages its DMR QA program effectively, and uses the results to target its inspections; the program is also one area in which the States appear willing to cooperate with the Region. The Region also encourages its States to use PCS directly or to develop conversion capabilities.

Concerns: At the time of the review, the Region was substantially behind its annual commitment for inspections. While the Region remained optimistic, continuous senior management attention will be necessary to achieve the target. In addition, there are discrepancies between the number of inspections the Region is reporting and the numbers in PCS, which seems to indicate that the Region is entering the data into PCS before the reports are completed; this is contrary to national guidance and reduces the incentive for ESD to complete the lab analyses and reports. For example, the WMD log of inspections shows that reports have been submitted anywhere from 18 days to 10 months following the on-site inspections. The Region has agreed to review the timeliness of its inspection reports, and should follow national guidance for entering the data into PCS.

Although the Region is working to promote State usage of PCS, one State (Delaware) has dropped the use of PCS as its primary data system. While there is a need to provide States with some flexibility in the use of automated data systems, the Region must actively discourage States that are current users of PCS from moving off the national data system, and should prohibit the use of §106 grant funds to support a new State system. If, despite the Region's best effort, the State of Delaware has decided to use another system, the Region must work to ensure that the State develops adequate PCS conversion capabilities. In addition, some of the Regional staff appear reluctant to use the system, and need to develop the capability to retrieve data from PCS in a manner that facilitates the identification of compliance trends.

Finally, while the Region has a well-organized central filing system, the individual permittee files are not well-maintained. For example, the information in the files is not sufficient to determine the reasons for noncompliance, the nature of the State's enforcement reponse, and the permittee's current compliance status. Although most of its programs are approved, the Region needs to improve its information management in order to maintain vigorous oversight of compliance and enforcement activities in its NPDES States. Consequently, the Region needs to establish and to adhere to defined procedures for maintenanace and "sign out" of permittee files.

STATE PROGRAM APPROVALS:

Strengths: With the exception of the District of Columbia, all the States are approved to administer the NPDES program.

Concerns: The Region's FY 1984 commitment to approve the State of Maryland's pretreatment program may not be met because of an apparent deficiency in the State's legal authorities; the Region also needs to continue pushing for the States of Pennsylvania and Virginia to assume the pretreatment program (contingent upon adequate resources and legal authorities). In addition, the Region's MOAs with the States of Maryland and Virginia are both ten years old, and need to be updated. While the Region appears satisfied with the legal and regulatory authorities of its NPDES States, it has not conducted an in-depth examination of any of its State programs. The Region should plan to conduct a complete review of all its approved programs consistent with national guidance, and should consider analyzing the program in the State of Pennsylvania first.

Finally, the Region should press for resolution of the differences between agencies in the State of Pennsylvania to eliminate roadblocks for mining permit issuance. In West Virginia, the Region needs to work with the State to conclude plans to convey the authority for surface mining to the Department of Reclamation.

STATE OVERSIGHT:

Strengths: The Region is to be commended for its stepped-up oversight activity, which seems to be the result of increased senior management attention to the NPDES program. The Region has conducted State-by-State operational reviews. It also plans to use performance based §106 work program agreements that are tied to permit issuance and quarterly compliance commitments, and plans to add the new national criteria for "timely and appropriate" enforcement response to these agreements consistent with national policy and guidance. These agreements, once executed, will substantially improve the States' accountability for compliance/enforcement program performance.

Concerns: Specific concerns about permit issuance and enforcement activities in approved States are discussed in the sections entitled "Permit Issuance" and "Enforcement Action" respectively. Although the Region has clearly increased its oversight of approved States, there is a need for the Region to further strengthen its activities in this area. The Region should implement an oversight program consistent with the guidelines in the new "National Guidance for Oversight of NPDES Programs," which recommends tailoring the level and frequency of Regional audits to a State's overall performance.

HEADQUARTERS FOLLOW UP:

Permit Issuance: OWEP will investigate alternative techniques for entering permit limit data into PCS. OWEP will also work with the Region to resolve any problems associated with issuance of the joint Region II/III OCS general permit.

Pretreatment: OWEP will provide final guidance on the use of conditional program approvals. In cases where the State administers the NPDES program and EPA has authority over the pretreatment program, OWEP will investigate how to combine public notices for permit modification and local program approval.

Delegation/Oversight: OWEP will promulgate the final NPDES settlement regulations shortly, and will provide the Region with formal comments on the Maryland pretreatment program as soon as possible.

NPDES Noncompliance and Program Reporting: The proposed regulation appeared in the *Federal Register* on July 23, 1984. OWEP will expedite promulgation of the final regulation following the public comment period.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OFFICE OF
WATER

SEP 12 1984

MEMORANDUM

SUBJECT: FY 1984 NPDES Management Review Findings

Rebecca Hanmer

FROM: Rebecca W. Hanmer, Director
Office of Water Enforcement and Permits

TO: Paul J. Traina, Director
Water Management Division, Region IV

Attached is our final report from the NPDES Management Review we conducted in May. It contains our assessment of the Region's NPDES program and our recommendations for ways to improve the program. It also reflects your responses to our recommendations, as well as your commitments for follow-up action. We will be following your progress through our established management reporting systems, but we would like to hear from you in the meantime if you have results that are particularly noteworthy.

I want to express my personal appreciation to you and your staff for your cooperation throughout the review process. I trust that our recommendations will be useful to you, and will help strengthen the NPDES program in your Region.

Attachment

cc: John A. Little, DRA
James H. Sargent, RC
Glenn Unterberger, Acting Associate
Enforcement Counsel for Water Enforcement

REGION IV

Office of Water Enforcement and Permits
NPDES Management Review Findings
May 1984

PERMIT ISSUANCE:

Strengths: The Region has a strong permit program in Florida, its one unapproved State, both in terms of meeting its commitments for permit issuance as well as the quality of those permits. The Region will probably exceed its annual commitment for municipal permit issuance (60) and should meet its industrial permit issuance commitment (60). The Region also continues to be a national leader in water quality based permitting and biomonitoring, which is now being used by the States; the Region has taken a very significant new policy step by expanding the use of biomonitoring requirements to municipal permits in Florida. The Region consistently finds the time to write minor permits, to identify non-filers, and to write some previously unissued permits even though these activities are not specifically budgeted. Finally, the Region is conducting an extensive review of the permit quality and the compliance status of all its pulp and paper facilities; the review findings should have national application in terms of the ability of various treatment technologies to meet the technology and water quality based permit requirements.

Concerns: With the exception of the State of Alabama, the Region has not been conducting real time permit reviews (pre-reviews) of State issued major permits in conformance with the NPDES regulations and State MOAs. Using its Alabama procedure as a model, the Region should develop a strategy that outlines how it plans to select and review State issued permits. This activity is a high priority one in view of the extent of State program approval in the Region and the need to assure that high quality permits are written in FY 1984-85 for control of toxic pollutants. Headquarters understands that the Region will assure that in FY 1985 all States submit draft major permits to the Region, and is working with its States on procedures for the review.

State industrial permit issuance is behind schedule, and Headquarters urged the Region to press its NPDES States for development and implementation of sound permit issuance strategies that eliminate the backlog. The Region indicated that it has already initiated development of State "backlog elimination" strategies, and expects to reduce the backlog in FY 1985. In addition, some States, especially Tennessee, are experiencing serious problems issuing even routine permits, and the Region should offer to provide either in-house support or contract assistance to help the backlogged States write complex, time-consuming permits in order to improve the State's overall rate of permit issuance.

Finally, there is a backlog of evidentiary hearing and variance requests, which is beginning to hamper some enforcement efforts. In order to resolve this backlog as expeditiously as possible, the Region needs to provide additional resources within the ORC.

PRETREATMENT (Local Program Approvals/Enforcement):

Strengths: With the exception of the State of Florida, all the States in Region IV are approved to administer the pretreatment program; the Region will probably meet its commitment to approve 14 local POTW programs in Florida this fiscal year. The Region uses contract assistance, where necessary, to train State personnel and to assist in local program development; it also participated in a North Carolina seminar on program implementation. Finally, the Region has completed or will conduct audits of selected local programs in the States of Tennessee, Florida, and Kentucky.

Concerns: Overall, the Region is substantially behind schedule in terms of State approval of local pretreatment programs. The States are committed to approve a total of 137 pretreatment programs in FY 1984, but, at the end of the third quarter, only 46 programs had been approved. In particular, there are serious problems in the States of South Carolina and Tennessee; the Region needs to consider direct Federal enforcement actions against recalcitrant POTWs in order to get local program submittals. In addition, the Region should provide help to its approved States in the form of seminars, meetings, and contractor assistance.

Following program approval, the Region is not moving ahead to ensure effective implementation of local programs. The Region needs to take a more active role in ensuring that States are modifying POTW permits to contain the necessary enforceable requirements, including the requirement to submit annual reports; the Region and States also need to ensure that these reports are submitted. In addition, based upon its experience this year, the Region should prepare a strategy for how to conduct audits and inspections of approved local pretreatment programs, as well as a plan to ensure that industrial users are complying with categorical standards (including how to handle Baseline Monitoring Reports).

While the Region cites its three year plan to get local programs in place during the first two years and concentrate on implementation follow-up in FY 1985, the plan is seriously behind schedule. For example, even if the Region and its approved States meet their local program approval commitments for FY 1984, there will be over 90 POTW programs still needing approval. In FY 1985, the Region will have to continue to press the importance of local program approval and implementation in each approved State, and to proceed, where necessary, with direct enforcement against POTWs that have failed to submit required programs by the end of FY 1984. The Region will also have to conduct direct oversight of approved local programs in the State of Florida, and take direct enforcement actions against industrial users in violation of categorical standards, where approved local authorities fail to take timely and appropriate action.

At the present time, the Region's pretreatment program consists of a single individual who is responsible for conducting program reviews, examining State programs to ensure ongoing consistency with the General Pretreatment Regulations, and conducting State program overview as well as audits of approved local programs. Headquarters recommended that the Region dedicate additional resources to program approval and implementation activities, and to establish a capability for enforcing categorical standards. The Region responded that it plans to shift some resources from permitting to pretreatment functions in FY 1985.

ENFORCEMENT ACTIONS:

Strengths: The Region has made good progress towards returning facilities on the fixed-base to compliance, and is fully prepared to issue NOVs and AOs in approved States for fixed-base facilities if it becomes necessary. The number of case referrals in FY 1984 is also expected to exceed substantially the FY 1983 referrals. In addition to regular informal communication, the ORC and WMD hold formal quarterly meetings to review the status of cases on the docket and the ORC concurs on all administrative orders. The Region has a viable Enforcement Management System, and continues to follow a coordinated Municipal Management System.

Concerns: The Region's fixed base includes ten Federal facilities, only four of which were back in compliance by the end of March. The Water Management Division needs to continue its efforts to resolve the remaining instances of significant noncompliance by September 30 through its Federal Facilities Coordinator.

While the Region appears to have an active enforcement program in the States of Florida and Kentucky, adherence to the new "National Guidance for Oversight of NPDES Programs" will require the Region to focus on and to evaluate the effectiveness of enforcement follow-up against significant noncompliers in approved States where the State has not taken timely and appropriate action.

Some of the Region's recent referrals have lacked substantive and procedural information required to be provided by established Agency policy and DOJ directives. Information deficiencies have included: discussion of legal issues and possible defenses; information on related Agency/ State enforcement actions; financial capability of the permittee to undertake the remedial action; and the amount or calculation of the proposed penalty or extent of required remedial action. OECM and DOJ are presently working with the Region to resolve these problems and to facilitate expeditious filing of cases, and the Region is providing the requested information. Headquarters attributes the recent problems to new staff in ORC, and expects that the problems will be resolved in the near future as the staff gains experience in preparing referrals for CWA cases.

COMPLIANCE REVIEW PROCESS:

Strengths: At the time of the review, the Region expected to meet or exceed its commitment for total number of compliance inspections; the Region also planned to perform a substantial number of overview inspections in its approved States. The WMD receives effective inspection support from the ESD, which is consistently responsive to specific requests from the WMD and the ORC. The Region also makes effective use of its DMR QA results to target PAI inspections, and has a strong biomonitoring program.

In addition, the Region has done a commendable job of getting its States to commit to becoming direct users of PCS or to interface with the national data system. The Region itself makes effective use of PCS for tracking compliance schedules and formal enforcement actions.

The Region has worked actively with its States to develop strategies consistent with the National Municipal Policy (NMP). The strategy from the State of North Carolina is especially well prepared; nearly all the other States submitted good strategies that included facility inventories.

Concerns: A substantial number of the Region's inspections are for "problem minor" facilities. Headquarters expressed concern that these inspections were being credited in SPMS, but the Region responded that this is not the case.

The Region does not use the standard deficiency notice to respond to selfmonitoring violations that are identified during overview inspections. The use of these notices is encouraged in order to promote permittee awareness of O&M problems and the effectiveness of follow-up actions to resolve self-monitoring violations. Also, the WMD needs to provide the ESD with more timely feedback on the use of inspection data in enforcement proceedings.

The Region needs to make better use of PCS as a State oversight tool. With the exception of the State of Kentucky, only the data for P.L. 92-500 major facilities in NPDES States are presently entered into the system. The Region should work with the States during the §106 program planning process to encourage them to either enter DMR data directly into PCS or to provide the information to the Region in a form that facilitates EPA's entry of the data into PCS. The Region should also consider conducting an in-house training session to familiarize its staff with how PCS can be used as an effective oversight and compliance management tool.

The State of Mississippi recently submitted its NMP strategy, which was due on April 1, 1984. The strategy and the inventory were inadequate, and the Region needs to press the State to submit a complete and acceptable strategy as soon as possible.

STATE PROGRAM APPROVAL:

Strengths: The Region is planning to conduct program reviews in the States of Kentucky and Tennessee to discuss problems with the approved programs in those States; the State of South Carolina is working with the Region to update its legal authorities to administer the NPDES program.

Concerns: The State of Tennessee is having serious problems issuing permits, enforcing effluent limitations, and approving local pretreatment programs. While the Region has conducted program reviews and has discussed problems with the State, the current performance problems and resource limitations appear to be of long-standing and firmer action appears to be needed. The Region should seriously consider a public hearing in the State of Tennessee to examine the overall performance of the approved program as the first step in the program withdrawal procedure.

STATE OVERSIGHT:

Strengths: The Region is using its fixed base list to overview its State compliance activities more closely. While the Region did not issue any NOVs in FY 1983, it had issued eight NOVs as of early June and was fully prepared to issue additional AOs to obtain compliance from remaining facilities on the fixed base. In FY 1984, the Region has increased its joint inspections of major NPDES facilities in approved States, aiming at 20 percent consistent with national guidance, and plans to update its files on State enforcement actions.

Concerns: The Region's policy on State overview continues to hamper its ability to obtain permit and compliance information from NPDES States, as well as its willingness to initiate direct Federal enforcement actions where approved States have failed to act in a timely and appropriate manner, although notable improvements are planned in FY 1984. For example, while the Region requested permit strategies from its States, it did not follow-up to ensure consistent quality among its States; also, as was mentioned earlier, the Region is not conducting real-time permit review consistent with the regulations. In addition, while State QNCRs are the Region's primary source of compliance and enforcement information, a number of the QNCRs fail to provide complete information on the nature of the violations, the dates of enforcement actions, pending responses, and compliance status. With respect to P.L. 92-500 facilities, the Region only receives DMRs and does not routinely receive information on compliance schedules and enforcement actions.

The Region should strengthen its approach to State overview based on its experience to-date as well as the new "National Guidance for Oversight of NPDES Programs." If State DMR data are not available to the Region in PCS, the Region needs to increase its level of State review and file audit substantially. As already noted, the National guidance and FY 1985 enforcement commitments also require a notably higher level of Federal enforcement in States that fail to act promptly to resolve instances of significant noncompliance. The level and frequency of State oversight/audit should, of course, be tailored to the State's consistent level of performance. The Region indicated that it plans to implement Headquarters recommendations through negotiations with its States on State/EPA enforcement agreements.

HEADQUARTERS FOLLOW-UP:

PCS: OWEP will review the Region's and States' resource needs for PCS support, and will provide technical assistance on more efficient ways to run retrievals.

State Oversight: OWEP provided the Region with a sample QNCR that shows the level of detail necessary for overview.

Case Referrals: OECM, with the assistance of DOJ, will provide ORC with support to to help resolve ongoing problems associated with case referral packages.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OFFICE OF
WATER

SEP 10 1984

MEMORANDUM

SUBJECT: FY 1984 NPDES Management Review Findings

Rebecca Hanmer

FROM: Rebecca W. Hanmer, Director
Office of Water Enforcement and Permits

TO: Charles H. Sutfin, Director
Water Division, Region V

Attached is our final report from the NPDES Management Review we conducted in June. It contains our assessment of the Region's NPDES program and our recommendations for ways to improve the program. It also reflects your responses to our recommendations, as well as your commitments for follow-up action. We will be following your progress through our established management reporting systems, but we would like to hear from you in the meantime if you have results that are particularly noteworthy.

I want to express my personal appreciation to you and your staff for your cooperation throughout the review process, and your exceptionally thoughtful response to the issues we raised. I trust that our recommendations have been and will be useful to you, and will help strengthen the NPDES program in your Region.

Attachment

cc: Alan Levin, DRA
Robert B. Schaefer, ORC
Glenn Unterberger, Acting Associate
Enforcement Counsel for Water Enforcement

REGION V

Office of Water Enforcement and Permits
NPDES Management Review Findings
June 1984

PERMIT ISSUANCE:

Strengths: The Region provides strong guidance and quality review for State permits; this has helped focus State efforts on some of the more difficult major permits involving significant toxic discharges. In addition, the staff provides high quality assistance to State permit writers, especially for water quality based limits and effluent guideline permits in the iron and steel, pulp and paper, and metal finishing industries. Finally, the Region is developing an approach to combined sewer overflow problems that could have national application.

Concerns: Although, with the exception of the State of Michigan, all six of the Region's approved States should come close to achieving their FY 1984 commitments for permit issuance, those commitments are not high enough to assure the elimination of the backlog in a reasonable time. The Region V States have an alarmingly high backlog of expired major permits--the highest rate and the highest number of expired permits nationally; it also appears that some of the States are issuing many minor permits rather than majors that are of more concern from a water quality standpoint. The Region needs to evaluate carefully the issuance rates and the FY 1985 commitments for the States of Illinois, Indiana, Michigan, and Ohio, and, if necessary, to increase those commitments in order to assure adequate progress in eliminating the backlog, as well as issuance of high quality permits that address toxics. The Region responded that it shared Headquarters concerns, and that the Region was actively working to enlist the support of its States in meeting their FY 1984 commitments and in improving their performance in FY 1985. The Region also reported that, due to pressure on the State of Michigan, the State has resolved a number of difficulties and its permit issuance performance has showed improvement over the past three months.

Finally, Region V has allowed its States to issue some permits that included §301(g) or FDF variance provisions without first obtaining approval of OWEP as required by Federal regulation. While the Region has indicated that it will submit the information on such variances and await Headquarters approval, Headquarters continues to recommend that the Region review earlier permits and take appropriate follow-up action if any of those variances proves to be improper.

PRETREATMENT (Local Program Approvals/Enforcement):

Strengths: The Region has a strong pretreatment program, and program submittal and approval rates are showing improvement. The Region's early strategy of working closely with its States and POTWs now seems to be paying off with higher quality local program submittals than other Regions have received.

In addition, Region V may be the only Region that has reviewed all the Baseline Monitoring Reports submitted by the electroplaters; it also has excellent procedures for notifying industrial users of their responsibilities under the program, which are now being used as a national model. Finally, the Region is a leader in the area of pretreatment enforcement, and, as of the most recent SPMS report, had initiated half of the total number of enforcement actions reported nationally.

Concerns: While local program approval rates are improving, the Region must sustain a high priority effort to assure that local programs are approved. The Region now expects that most of the required programs will be approved by March 1985, but many will need to be addressed in the last half of FY 1985. Progress in Michigan is much slower, and, in that State, approvals may not be completed until FY 1986; Headquarters advised the Region that this was totally unacceptable performance, and that EPA must do whatever it can to get the Michigan program back on track. The Region responded that it was working with all its States to improve program management, and that staffing levels are up in the States of Illinois, Indiana, and Michigan. The Region also reported that the State of Michigan has reviewed its FY 1984 commitment for program approvals and that the Region is optimistic that the State can accomplish its commitment of 50 program approvals.

ENFORCEMENT ACTIONS:

Strengths: The Region has an aggressive enforcement program, is meeting its FY 1984 commitments, and has non-compliance rates for both municipal and non-municipal dischargers that are below the national averages. The Region initiates direct enforcement actions in all of its approved States, where the States have exhibited reluctance to use enforcement actions to require municipalities to comply with the statutory compliance deadline in the Clean Water Act (CWA) in the absence of Federal funding. The Region also leads the nation in the number of cases referred under the CWA thus far this year, including the highest number of municipal cases.

The Region has a very good MOU between the Water Management Division (WMD) and the Office of Regional Counsel (ORC), which sets out in detail the individual responsibilities of the WMD and the ORC in all types of enforcement actions ranging from evidence gathering to litigated cases. The MOU describes the lead responsibilities for each office for each type of action, sets out time guidelines, and provides for coordination and approval procedures. While strict in its application, the MOU does allow for procedural modifications if warranted in a particular case. The Region has also formed a Litigation Screening Committee (LSC), which is composed of managemement from both the WMD and the ORC, as well as technical and legal staff. The LSC discusses the merits of each case, and makes recommendations on the types of enforcement actions that may be appropriate and on timetables for initiating those actions; senior management in the WMD and the ORC meet monthly to review these recommendations, as well as progress in initiated cases. This results in good coordination and administrative order support, as well as preparation of excellent litigation packages. The Region's MOU and the LSC concept can serve as a national model.

In addition, the Region tracks all enforcement actions until the case is closed out, and conducts annual inspections of facilities that are under consent decrees. Most of these inspections are conducted by the ESD, although the WMD will conduct some depending upon specific Consent Decree requirements. The types of inspections conducted also vary, again, depending upon the decree requirements. These annual EPA inspections are in addition to any visits conducted by State or local authorities.

Finally, the Region has established a formula for calculating penalties in municipal enforcement cases, which should contribute substantially to development of a national procedure.

Concerns: While the Region seems to have high compliance rates, it also has a high number of expired permits (see Permit Issuance). This raises questions regarding whether many dischargers, who are in compliance with old BPT permits rather than the BAT limits that would be included in a reissued permit, should be required to meet more stringent limits for toxics control.

COMPLIANCE REVIEW AND ENFORCEMENT PROCESS:

Strengths: The WMD has sound criteria and procedures for targeting and conducting inspections, attempts to schedule EPA inspections to complement State inspections, and has improved management of the DMR QA program. The Region also has good EMS procedures and standard forms for managing internal paperwork on enforcement actions, and its State QNCRs are among the best nationally in terms of consistency and quality of data.

In addition, the Region has been successful in getting its States to either assume direct responsibility for PCS data management or to develop an operational interface with PCS. When ADABAS is operational, the Region will have three States using PCS to track compliance schedule requirements.

Concerns: At the time of the review, the Region was significantly behind its FY 1984 commitment for inspections of major facilities; the Region responded that it expects to meet its target by the end of the fiscal year, and has planned to conduct more non-sampling inspections in early FY 1985 in order to increase measurable outputs earlier in the year. In addition, despite the WMD's good planning process and improved coordination with ESD, there needs to be further improvement in coordination to review progress in selecting targets and inspection types, to set the original schedule, and to make subsequent adjustments to that schedule. Finally, Headquarters expressed the concern that inspection data are not entered into PCS in a timely manner. The Region responded that data are now entered into PCS within one week of completion of the final report.

In addition, while the Region has been active in enlisting its States to use or interface with PCS, the Region is not maintaining high quality data in the system. For example, the Region: only has DMR data in PCS for three States; has the highest percentage of missing DMR limits and measurements; and does not devote adequate resources to cover both DMR data entry and filing, which has resulted in a large backlog of filing. Headquarters recommended that the Region place increased emphasis, as well as resources, on entering and maintaining high quality data in PCS. The Region responded that, by October 1, 1984, it expects to begin entering all data into PCS for five of its approved States, and that it has initiated a contract for completion of the Wisconsin interface by December 30, 1984.

Finally, the Region needs to continue to press the State of Indiana to start taking part in the DMR QA program, and to follow up on DMR QA when the State fails to take action.

STATE PROGRAM APPROVAL:

Strengths: All Region V States have approved NPDES programs; four of the six States are also approved to administer the pretreatment program.

Concerns: Headquarters recommended that the Region continue to press for approval of high quality pretreatment programs in the States of Indiana and Illinois. The Region responded that it expects to approve the Indiana pretreatment program in FY 1985, and has notified the State of Illinois that it is considering conditioning its program grant for FY 1985 to require application during that fiscal year.

The Region also needs to continue working closely with Headquarters to establish regulations and to complete the remand of the Michigan pretreatment program, which will require a significant effort by both the Region and by Headquarters.

STATE OVERSIGHT:

Strengths: The Region concludes detailed State-by-State agreements during the §106 program planning process. It also conducts quarterly meetings with each State on enforcement actions and performs audits of State files for most noncomplying major facilities; file audits are concentrated in States with weaker NPDES programs, which is consistent with the new "National Guidance on Oversight of NPDES Programs."

In addition, the Region makes effective use of the QNCRs to select the cases to audit during routine State compliance review meetings, and conducts aggressive monitoring of the adequacy and timeliness of State enforcement actions. Finally, the Region is conducting an overall evaluation of the State of Minnesota's permit regulations in order to identify any areas requiring update or modification.

Concerns: The Region's oversight of the compliance/enforcement program appears to be much stronger than its oversight of the permits program, which needs to be strengthened substantially. For example, while the Region has an excellent accountability system, which was developed as part of its §106 grants process, the States' commitments for permit issuance are not sufficient to assure elimination of the major permit backlog by the end of FY 1985 (see Permit Issuance).

If the national goal of reissuing high quality permits by the end of FY 1985 is not achievable, the Region should work with the affected States to develop longer-term strategies that will assure elimination of the backlog as expeditiously as possible. In developing these strategies, the Region should work with upper level management in the States in an effort to ensure that the States view elimination of the major permit backlog as a high priority activity. In addition, the strategies should address any resources or training assistance that will be necessary to achieve the national goal, especially national permit contract assistance to supplement efforts by the Region and State.

Since the NPDES permit is the basic regulatory mechanism for ensuring that dischargers meet the requirements of the CWA, it is essential for the Region to strengthen its oversight of State permit programs commensurate with its current level of oversight of State compliance and enforcement programs. This will require the Region to conduct file audits of State permit programs, with efforts concentrated in States with particulary serious problems. It will also require the Region to examine its States' resource levels, skill mixes, and management systems to determine the cause(s) of and remedies for the permitting problems. In developing its oversight program, the Region should adhere to the criteria in the new "National Guidance for Oversight of NPDES Programs," which addresses oversight of permit programs as well as compliance and enforcement programs. Headquarters is pleased to learn that the Region intends to improve its oversight of State permit programs, and plans to conduct audits of all its State permit programs in FY 1985 to specifically focus on the issues that Headquarters identified as integral to the permitting process.

Finally, while the Region reports that Michigan is showing progress as a result of the Region's efforts, Headquarters continues to stress the need for the Region to continue to work with and oversee the Michigan NPDES program in order to further improve performance by that State in meeting program objectives.

HEADQUARTERS FOLLOW UP

Enforcement: OWEP will expedite drafting of a municipal penalty policy, and will consider Region V's procedure as a model. OWEP will also provide the Region with Financial Capability Guidance, and will investigate the possibility of providing the Region with additional contractor support for pretreatment enforcement.

Pretreatment: In response to the Region's request, OWEP is providing funds through the national pretreatment program contract to assist in review of categorical industry 90-day compliance reports.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OFFICE OF
WATER

AUG 20 1984

MEMORANDUM

SUBJECT: FY 1984 NPDES Management Review Findings

Rebecca Hanmer

FROM: Rebecca W. Hanmer, Director
Office of Water Enforcement and Permits

TO: Myron O. Knudson, Director
Water Management Division, Region VI

Attached is our final report from the NPDES Management Review we conducted in May. It contains our assessment of the Region's NPDES program and our recommendations for ways to improve the program. It also reflects your responses to our recommendations, as well as your commitments for follow-up action. We will be following your progress through our established management reporting systems, but we would like to hear from you in the meantime if you have results that are particularly noteworthy.

I want to express my personal appreciation to you and your staff for your cooperation throughout the review process. I trust that our recommendations will be useful to you, and will help strengthen the NPDES program in your Region.

Attachment

cc: Dick Whittington, RA
Paul A. Seals, RC
Glenn Unterberger, Acting Associate
Enforcement Counsel for Water Enforcement

REGION VI

Office of Water Enforcement and Permits
NPDES Management Review Findings
May 1984

PERMIT ISSUANCE:

Strengths: The Region has met its annual commitment for major municipal permit issuance, and is conducting some toxic pollutant limiting/evaluation work for POTWs. The Region is also planning to issue at least 50 BPJ industrial permits, primarily to organic chemical plants. In addition, the Region is actively collecting acute toxicity bioassay data, which will be used to identify areas where chronic toxicity assessment and toxicity reduction evaluation work is needed. The Region has also drafted and noticed the 12 general permits that it is committed to issue this fiscal year. Finally, the Region works with its States to identify nonfilers and sends 15-20 letters per month, which is commendable in light of the recent GAO Report that highlighted the problem of non-filers.

Concerns: From the information submitted at the time of the review, it appeared that the Region had developed a workable, complete FY 1984 Priority Permit List containing several complex, difficult industrial permits. At that time, the Region was also behind schedule in issuing major industrial permits to meet its FY 1984 commitment; the Region had issued only 28 of its total commitment of 130 major industrial permits for FY 1984; another 35 permits had been public noticed and 73 more were drafted and scheduled for public notice by July 1st. Headquarters encouraged the Region to submit its Priority Permit List consistent with national program guidance, and to meet its annual permit issuance commitment, including adhering to its list, rather than by substituting less complex permits to meet its annual commitment. The Region responded that it had recently provided Headquarters with a revised list, and that it fully intended to meet its FY 1984 commitment of 130 permits.

The Region is also experiencing problems issuing new source/major new discharger permits, and has a growing backlog of both municipal and industrial minor permits. Finally, the Region has made little or no progress in reducing its rather substantial backlog of evidentiary hearing requests since the OW mid-year review last year and has agreed to to take some positive steps to reduce that backlog.

PRETREATMENT (Local Program Approvals):

Strengths: The Region should meet or exceed its commitment for pretreatment program approvals, which represents a substantial improvement since the OW evaluation last year and seems to be the result of an effective shift of resources. In addition, the Region prepares excellent summary fact sheets for each approved program, routinely modifies permits to include approved programs, continues to provide implementation support to approved POTWs through seminars and consultation, and plans to audit approved local programs as part of its routine inspections.

PRETREATMENT ENFORCEMENT:

Strengths: The Region is one of the most active in terms of taking enforcement actions against POTWs that have not submitted approvable pretreatment programs, and was exceeding its annual commitment by 193 percent at the end of the second quarter. The Region has been actively involved in a national industrial user case for which it had already submitted a case referral. By the end of FY 1984, the Region plans to complete review of the 150 Baseline Monitoring Reports (BMRs) it has received from industrial users.

Concerns: The Region has concentrated its efforts on local program approvals, and has collected little information on the numbers or compliance status of industrial users. This is due to resource constraints, as well as the Region's decision to defer to soon-to-be-approved POTWs.

ENFORCEMENT ACTIONS:

Strengths: Region VI is a National leader in implementation of the National Municipal Policy. The Region was first to submit all of its State strategies, and had met with representatives of approximately 176 POTWs concerning compliance with the 1988 deadline. By the end of FY 1984, the Region expects to have issued AOs to all noncomplying major POTWs to solicit the necessary information to establish enforceable compliance schedules.

Concerns: There had been a problem with the quality of the Region's case referral packages, which often lacked specifics on one or more of the following: list of violations, possible remedies, financial capability (for POTWs), and/or method of proposed penalty calculation. At a May 4th meeting, the Region agreed to correct these problems and there has been an ongoing exchange of correspondence between the Region and OECM since that time to address these issues. In addition, Headquarters identified a few instances in which the Region had apparently issued AOs, which, when subsequently violated, were then followed up with a warning letter rather than a formal enforcement action. The Region commited to review the specific cases identified, and to report back to Headquarters on its findings.

Finally, prior to November 1983, ORC had three staff attorneys working exclusively on NPDES water referrals; more recently, however, only two attorneys have been assigned. Given the problems the Region has experienced with the quality of its referrals, as well as the Region's vigorous municipal and pretreatment enforcement initiatives, the ORC should consider restoring a staff attorney for water enforcement.

COMPLIANCE REVIEW AND ENFORCEMENT PROCESS

Strengths: The Region continues to act as a pilot for PCS enhancements, and is a National leader in data quality of DMR information in PCS. The WMD coordinates well with ESD, and the Region and its States are meeting or exceeding their commitments for inspections of major municipals and nonmunicipals, and are surpassing their inspection commitments for minor P.L. 92-500 facilities by as much as 300 percent; the level of inspections is indicative of the cooperative working relationship between the Region and its States in the area of inspection activities. The WMD takes the lead in directing the ESD inspections, and reviews candidates on a monthly basis; inspection data are entered very promptly into PCS. Finally, the initial phases of the compliance review process are well-organized around the basic EMS procedures.

Concerns: At the time of the review, the Region's level of significant noncompliance for major POTWs on final effluent limits is 17%, which exceeded the national rate of 13%. Since that time, however, the Region has reduced this level of significant noncompliance to 12%, which is below the national average. In addition, Headquarters noted that the staff has a heavy workload of file reviews, is not able to address some recurring effluent violations of the technical review criteria (TRC), and does not consistently document its decisions to defer action on TRC violations by majors. Failure to document gives the appearance that the Region is either not aware of or is not addressing a violation. While the "no action" alternative may be appropriate, the Region should always document the technical reasons in order to show why no action is appropriate or how this step relates to a larger plan to solve the problem.

STATE DELEGATION:

Strengths: There has been significant activity in Louisiana recently, which could lead to program approval in FY 1985. In addition, the Region recently signed a MOA with the Oklahoma Health Department for joint issuance of minor municipal permits, which may facilitate delegation to that State. To date, the Region has sought early Headquarters involvement in review of preliminary State materials.

Concerns: Region VI is the only Region that has not succeeded in approving a single State NPDES program. There is an urgent need for the Region to take a much more active role in promoting NPDES program approval, and to begin working on State specific issues that must be resolved even if the Clean Water Act is amended to allow partial program approval; these include issues such as adequacy of resources, how the pretreatment program will be implemented, conflicts of interest, regulations, PCS compatability, program descriptions, Attorney General statements, and MOUs. Where the Region encounters specific problems with its States, it snould consult Headquarters or another Region that may have successfully resolved similar problems with its States. The Region is urged to condition its §106 grant funds on State submission of certain program materials.

HEADQUARTERS FOLLOW UP

Permits: OWEP will: decide whether the Region's "first time" major BAT industrial permits can be counted against its FY 1984 commitment; and will provide the Region with a more detailed report on the recent Permit Quality Review conducted in the Region. OWEP will also work with OWPO to expedite the Secondary Treatment regulation. At the request of the ORC, OWEP will determine if there are any evidentiary hearing cases that should be expedited because they concern issues of national significance.

Pretreatment: OWEP will: visit the Region to look at some of the approved programs and to participate in/evaluate the Region's audit inspection approach; distribute examples of the Region's summary fact sheets to other Regions; and look into expanded use of contractor support for POTW and IU audits.

Compliance Review: OWEP will: continue to work on eliminating as many PCS and ONCR problems as possible until the new PCS data base is fully operational; and will revise the national EMS guidance to reflect recent initiatives and requirements.

Enforcement Actions: OECM will coordinate a joint response (OECM, OWEP, and OGC) regarding the legality of administrative consent orders that contain stipulated penalties for future violations. Headquarters is examining this issue as part of a broader review of administrative enforcement practices, and will provide further guidance by the end of the fiscal year.

State Delegation: OWEP will keep the Region apprised of the status of CWA amendments regarding partial program approval, as well as any litigation that could affect State program approvals.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OFFICE OF
WATER

AUG 20 1984

MEMORANDUM

SUBJECT: FY 1984 NPDES Management Review Findings

Rebecca Hanmer

FROM: Rebecca W. Hanmer, Director
Office of Water Enforcement and Permits

TO: Paul M. Walker, Acting Director
Water Management Division, Region VII

Attached is our final report from the NPDES Management Review we conducted in May. It contains our assessment of the Region's NPDES program and our recommendations for ways to improve the program. It also reflects your responses to our recommendations, as well as your commitments for follow-up action. We will be following your progress through our established management reporting systems, but we would like to hear from you in the meantime if you have results that are particularly noteworthy.

I want to express my personal appreciation to you and your staff for your cooperation throughout the review process. I trust that our recommendations will be useful to you, and will help strengthen the NPDES program in your Region.

Attachment

cc: William W. Rice, DRA
David R. Tripp, RC
Glenn Unterberger, Acting Associate
Enforcement Counsel for Water Enforcement

REGION VII

Office of Water Enforcement and Permits
NPDES Management Review Findings
May 1984

INTRODUCTION:

Headquarters was exceptionally pleased with its review of the Region's NPDES program. The recent changes in management appear to have resulted in dramatic improvements in both the Region's performance and its general attitude. During the review, the Region indicated that it was considering additional management changes, which could serve to further strengthen the program and to improve State performance.

PERMIT ISSUANCE:

Strengths: The NPDES States are consistently issuing permits as they expire, and have a very small backlog of major industrial and major municipal permits as well as variance requests; the Region conducts a thorough review of all State-issued major permits and submits informal written objections as necessary. All the States have completed inventories of POTWs that will be affected by the redefinition of secondary treatment; they are involved in toxics monitoring for POTWs, and have issued a limited number of municipal permits with metals limits. Some States, Iowa in particular, actively search for nonfilers during facility inspections, which is commendable in light of the recent GAO Report citing this as a widespread problem.

Concerns: Headquarters found that the States of Kansas and Missouri had issued a number of BPT permits with expiration dates beyond July 1984; these permits should contain BAT limitations, and should be modified for facilities where BAT is more stringent than BPT, e.g. petroleum refining. The Region followed up on this Headquarters' concern after the review, and identified two or three permits where this was a problem; Headquarters assumes that these permits will be modified accordingly. The Region also alerted its States of the need to modify petroleum refinery permits to incorporate revised BAT requirements as soon as the settlement agreement is finalized.

In addition, Headquarters found little evidence of toxicity-based permitting. While this is not unique to Region VII, it is an area in which the Region and States need to place more emphasis in the future.

Finally, the data in PCS indicated that the States had a very large backlog of minor industrial permits. At the time of the review, the Region questioned the validity of the numbers in PCS, and Headquarters recommended that the Region verify whether there were PCS data entry problems or whether the backlog numbers were correct. Following the review, the Region reported that it had determined that the "backlog" was due largely to a PCS coding problem and that Regional staff are currently working with States, especially the State of Iowa, to make the necessary corrections to PCS.

PRETREATMENT (Local Program Approvals):

Strengths: Both the Region and its States are meeting their commitments for local program approvals. In addition, the Region is working closely with its States on implementation of approved local programs. For example, the Region has conducted several implementation audits with contractor assistance, and plans to use contractor assistance to help States conduct similar audits; the Region has also met with many POTWs to help resolve specific implementation problems.

Concerns: Some States are not adequately carrying out their pretreatment responsibilities. The State of Missouri, for example, is weak in reviewing programs and conducting implementation audits, while the State of Nebraska, which plans to have a State-run program, has not committed adequate resources to ensure the approval of its program. With respect to the State of Missouri, the Region responds that it is now reviewing selected local programs prior to approval, and is providing written comments to the State. The Region also indicates that the State of Nebraska is taking steps to strengthen its pretreatment program by hiring a full-time pretreatment coordinator and by assigning additional persons to the program on a part-time basis.

PRETREATMENT ENFORCEMENT:

Strengths: Although the State of Missouri is approving local programs of questionable quality, the Region is actively tracking the State's progress and is prepared to issue AOs to POTWs unless the State takes the appropriate remedial action.

Concerns: Some POTW permits do not contain compliance schedules for local program development; other permits contain the July 1983 deadline, and the administering agency has not taken an enforcement action that establishes a later compliance deadline consistent with national policy. In addition, the Region needs to set up a program for systematically determining whether local programs are incorporating categorical standards; where no categorical standards exist, the Region needs to determine whether the requirements for indirect dischargers are being established in an equitable manner. The Region also needs a system for reviewing the Baseline Monitoring Reports. In response to these concerns raised by Headquarters, the Region responds that it is negotiating FY 1985 State workplans to include specific numerical outputs for many of these activities, such as local program approvals, enforcement actions and BMR reviews. The Region also indicates that State workplans include a commitment to develop and implement a pretreatment strategy consistent with the new "National Guidance for Oversight of NPDES Programs."

While these actions should go a long way toward resolving the problems raised by Headquarters, national policy and guidance have emphasized the need for vigorous action to obtain complete and approvable local programs by September 30, 1984, including enforcement action where necessary. Even if the Region and its States meet their FY 1984 commitments for local program approvals, there will be approximately twenty-one POTW programs still needing approval. In view of the substantial delays in local program submittals to meet the regulatory requirements, the Region needs to accelerate its assessment of POTW referral needs for the remainder of FY 1984 and for FY 1985 and to initiate case preparation.

ENFORCEMENT ACTIONS:

Strengths: The Region prepares well written and documented litigation reports, drafts of motions, and consent decrees. There is also a very good working relationship between the Water Division and the ORC, which is a marked improvement over the situation that existed a year ago.

Concerns: While the quality of its case work is excellent, at the time of the review the Region had forwarded only one referral during the first two quarters of FY 1984. The low level of activity seemed to be the result of two factors. First, all four States in the Region administer the NPDES progam, and the Region typically defers to the State so long as it is responding to the violation. Second, the ORC commonly defers to the Water Division with respect to determining whether the Region should initiate formal enforcement action. In the past, the combination of these two factors has resulted in lengthy delays before the Region initiates referrals, which means that the facts of the case are sometimes stale. In response to this concern, we understand that the Region is working to correct this situation by shortening the length of time between the date of the violation and the date of EPA's involvement, negotiating with its States over timely enforcement actions, and including the ORC attorneys in its quarterly compliance review meetings with the States. As evidence of its progress, the Region cites the fact that it referred three new cases in the third quarter of FY 1984, and that it intends to complete another case referral before the end of the fiscal year.

COMPLIANCE REVIEW AND ENFORCEMENT PROCESS:

Strengths: The Region has made significant improvements in the areas of compliance monitoring and enforcement follow-up, and is meeting or exceeding its end-of-year targets. All of the States have submitted their National Municipal Policy strategies, which are well-prepared; the Region is to be commended for the timeliness and quality of these documents given its relatively late start. In addition, the Region's inspection reports are very comprehensive and the ESD provides good support to the WMD for inspections and for enforcement follow up.

Concerns: When ESD detects self-monitoring violations during inspections, the Region does not use standardized deficiency notices. Headquarters recommended the use of these notices to increase permittee awareness of O&M problems and the effectiveness of follow-up actions to resolve self-monitoring violations. The Region responds that, since the review, the WMD and the ESD have agreed to begin issuing deficiency notices in FY 1985, and that the States are committed to follow up on these activities in their FY 1985 workplans.

In additon, the Region does not use its central compliance files or PCS in conducting compliance review and State oversight; instead, the staff relies more on individual desk records, QNCRs and DMRs, which reduces the incentive for maintaining up-to-date data in PCS and in permittees' files. The result is that the Region has scattered and incomplete records of its NPDES activities.

Finally, it appears that the State of Missouri may develop its own automated data system. While there is a need to provide States with some flexibility in the use of automated data systems, the Region must actively discourage the State of Missouri from moving off PCS, including a clear prohibition against the use of §106 grant funds to support a separate system. If, despite the Region's efforts, the State ultimately decides to use another system, the Region must work to ensure that the State develops accurate PCS conversion capabilities.

STATE DELEGATION

Strengths: The Region has made excellent progress in delegating NPDES program responsibilities to its States. All four States have NPDES authority; three States administer the Federal facilities program, and the Region has determined that the State of Kansas has the authorities in place to assume the program as well. Two States have pretreatment program authority, with the remaining two States (Kansas and Nebraska) expected to assume the program before the end of FY 1985.

Concerns: With the exception of the State of Missouri, the States have exhibited little interest in receiving general permit authority. Missouri has issued two general permits without the requisite legal authority. We understand that the Region has directed the State to cease issuing general permits until its program is approved; the State is expected to submit its request shortly.

STATE OVERSIGHT:

Strengths: The Region has significantly increased its level of State oversight since last year and now has a sound working relationship with its States, which is resulting in increased field presence and more management involvement in EPA/State meetings. Both the Region and its States are exhibiting a positive attitude towards the development of EPA/State enforcement oversight agreements. In addition, the Region conducts comprehensive State program audits, and provides a written report of its findings and recommendations; the Region also holds quarterly meetings with each State.

Concerns: All the State NPDES programs need to revise their regulations to reflect amendments to the CWA and to the Federal regulations. At the request of Headquarters, the Region has initiated a review of the Kansas NPDES program. Headquarters views this as an important activity; the Region indicates that it anticipates difficulty in completing the task given its other priority activities, but that it will pursue the review as resources permit.

The Region needs to establish a more formal structure for determining State technical assistance needs. In addition, the QNCR reports from the four States are not prepared in accordance with the Federal regulations and national guidance. The reports lack some of the pertinent information, which makes it difficult for the Region to evaluate the timeliness and appropriateness of State enforcement actions. In comparing one Nebraska QNCR with State files, the Region found a 20 percent error rate. Headquarters recommended that the Region take immediate corrective action in order to assure that accurate information is being reported on the significant noncompliers. The Region indicates that, in addition to its comprehensive annual audits, it now plans to conduct periodic special audits in FY 1985 to verify State noncompliance reporting and inspection numbers.

HEADQUARTERS FOLLOW UP

Permits: OWEP will: review the major permit algorithm to determine whether a "significant minor" definition can be developed and to see if these facilities can be considered in the workload model; provide at least one-month advance notice of Region/State training seminars on water quality permitting; develop a permit issuance manual for new permit writers; and improve Headquarters review procedures in an effort to speed up variance determinations and general permit program reviews.

Pretreatment: OWEP will assess its review procedures for categorical determinations, and will develop guidance to help States set up effective implementation programs. In addition, OWEP will work with OWRS to provide the Region and the States with technical expertise for categorical standards determinations, as well as BMR review and follow up.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OFFICE OF
WATER

SEP 25 1984

MEMORANDUM

SUBJECT: FY 1984 NPDES Management Review Findings

FROM: Rebecca W. Hanmer, Director
Office of Water Enforcement and Permits

TO: Max H. Dodson, Director
Water Management Division, Region VIII

Attached is our final report from the NPDES Management Review we conducted in June. It contains our assessment of the Region's NPDES program and our recommendations for ways to improve the program. It also reflects your responses to our recommendations, as well as your commitments for follow-up action. We will be following your progress through our established management reporting systems, but we would like to hear from you in the meantime if you have results that are particularly noteworthy.

I want to express my personal appreciation to you and your staff for your cooperation throughout the review process. I trust that our recommendations will be useful to you, and will help strengthen the NPDES program in your Region.

Attachment

cc: Alexandra Smith, DRA
Tom Speicher, Acting RC
Glenn Unterberger, Acting Associate
Enforcement Counsel for Water Enforcement

REGION VIII
Office of Water Enforcement and Permits
NPDES Management Review Finndings
June 1984

PERMIT ISSUANCE:

Strengths: Both the Region and the NPDES States have a low backlog of major industrial permits, and should meet their FY 1984 permit issuance commitment and the FY 1985 goal of eliminating the backlog; minor industrial permit backlogs are also low. The Region has no new source/major new discharger applications or evidentiary hearing requests pending, and has already issued one of two general permits for construction activities. Most of the Region's work to-date in water quality-based permitting has been pollutant specific (conventionals, metals, and ammonia), but it plans to redirect some of the work into analysis of POTW discharges for toxicity and toxic pollutants.

Concerns: The Region is behind schedule for issuing major municipal permits, and, because the State of South Dakota no longer drafts permits for EPA issuance, the Region may not meet its FY 1984 commitment. In addition, while the major permit backlog in the State of Colorado is not large, it does contain several permits for major dischargers that have been expired for years (CF&I Steel and Denver Metro). Finally, a number of new minor permit applications have been submitted to EPA and to the NPDES States, but have not been acted upon; the administering agencies should process these applications as expeditiously as possible.

PRETREATMENT (Local Program Approvals):

Strengths: The Region has recently assigned additional staff to the pretreatment program, which should substantially improve productivity. The Region has also developed its own guidance on preparing and submitting local programs, has turned down several inadequate submittals and has issued schedules to correct the deficiencies. Implementation activities include developing an inspections manual, and conducting inspection workshops and audits of POTWs.

Concerns: While the Region was substantially behind in approving local programs at the time of the review, the Region indicates that it will come close to meeting its FY 1984 commitment. The Region cites difficulty in securing interjurisdictional agreements as a major impediment to approval. Even if the Region meets its FY 1984 commitment of ten local program approvals, there will be thirty-one POTW programs still needing approval. National policy and guidance have emphasized the need to obtain complete and approvable local programs by September 30, 1984, including enforcement action where necessary.

PRETREATMENT ENFORCEMENT:

Strengths: The Region is stepping up enforcement actions to require local program submittals, and has forwarded to Headquarters a case referral for a pretreatment violation by an electroplater; these actions represent a commitment by the Region to enforce the pretreatment requirements.

Concerns: Many of the POTWs without approved programs have no formal compliance schedule or have schedules that extend compliance until as late as 1986, which seems to be unique to Region VIII and is not consistent with national policy. The Region indicates that it plans to address all remaining POTWs by placing them on compliance schedules, which will be rigidly enforced; the Region also reports that it is preparing one referral for failure to develop a local program, and has just sent out over 400 §308 letters to suspected electroplaters requesting submittal of information, including BMRs.

ENFORCEMENT ACTIONS:

Strengths: Enforcement activity in the Region shows improvement over FY 1983. Through the third quarter, the Region had referred five civil actions under the Clean Water Act, and was also meeting or exceeding its compliance commitments. At the end of the third quarter, the Region had issued 21 AOs and 13 NOVs.

The Region recently initiated weekly meetings between the WMD and the ORC to discuss cases under development and potential referrals. These meetings have served to enhance the visibility of enforcement, and have helped improve coordination between the two staffs. Finally, the Region has made a concerted effort to work with its States to develop strategies under the National Municipal Policy (NMP). All the States have completed their strategies, which seem to be of good quality--especially the strategies for the States of Wyoming, South Dakota, and Utah.

Concerns: While the Region's case referrals have increased, nearly all the recent CWA referrals have been against minor permittees. The Region indicated that its approved States are willing to initiate enforcement actions against significant violators, which obviates the need for direct EPA enforcement action. However, there are violations by major facilities in the State of Colorado against which the State has not taken action; eleven such facilities were recently listed in a separate memorandum to the WMD. More importantly, at the time of the review, the Region indicated that it would probably not meet its commitment regarding fixed base facilities. At that time, there were 12 facilities that the Region said might not be in compliance or under an enforcement order; two of these were Federal facilities. Since the review, however, we understand that the Region has been working with OFA and OWEP to resolve the problems with the two Federal facilities, has reviewed the facts surrounding the remaining facilities, and now expects to have only one facility remaining; that remaining faciliity will be addressed by permit issuance in early FY 1985.

The Region has produced some marginally sufficient litigation reports. For example, litigation reports have not included copies of necessary items such as NPDES permits and DMRs, where appropriate; the packages are weak on the subjects of proposed remedies and calculation of penalties. In addition, there seems to be a reluctance on the part of the Region to inform Headquarters or DOJ of all the information it has gathered.

The ORC reviews AOs only for gross legal deficiencies; on occasion, it appears that administrative orders have been used to modify permits. The ORC has indicated that it is willing to do more, but the WMD seems to prefer to limit ORC review. The weekly meetings between the WMD and the ORC may help foster better coordination between the WMD and the ORC, but the Region needs to consider other ways to foster a close, effective working relationship between the two offices.

Finally, the State of Colorado has been issued repeat NOVs concerning the same facility for recurring violations. The Region plans to use weekly meetings with the State to obtain better follow up to NOVs issued to the State. In addition, some of the States--particularly the State of Utah--resolve permit violations by revising the water quality standards and then modifying the discharger's permit. The Region agreed to work with its States to eliminate this practice where permit modification is not an appropriate solution to noncompliance.

COMPLIANCE REVIEW AND ENFORCEMENT PROCESS:

Strengths: The Region checks all DMRs for accuracy and completeness, notifies permittees of any reporting deficiencies, and enters all DMR data for majors into PCS except the data for the States of Colorado and Montana; Colorado enters its own data, and Montana is scheduled to begin entering its information on effluent limits soon. The quality of the basic WENDB data in PCS is excellent. The Region also uses PCS to track compliance schedules. The Region's QNCR is of very high quality, and its files are complete and up-to-date.

In addition, the Region is meeting its FY 1984 inspection commitment, and has made significant progress in its inspection program since the FY 1983 Office of Water mid-year review; improvements include the development of an inspection protocol, which describes the goals and objectives of the inspection program as well as the type of information that ESD inspectors should provide to the WMD after the inspection. The ESD conducts a relatively high percentage of PAIs, which leads to improved DMR quality.

Concerns: The Region is currently using a paraprofessional to determine the appropriate enforcement response, write AOs, and to determine interim effluent limits for compliance schedules. While this work can be performed by a paraprofessional, the Region needs to continue to provide adequate supervision and review of the AOs.

Due to past problems with the data in PCS, there is an ongoing reluctance to use the information in PCS for compliance review and management. The Region should encourage fuller utilization of the automated data system for day-to-day compliance review. The Region also needs to enter information on all enforcement actions into PCS, so that one system can be used to track all compliance and enforcement activities. The Region's response anticipated increased use of PCS.

In addition, the Region needs to use the information in the DMRs and QNCRs to select inspection candidates, and to support potential enforcement actions. The Region also needs to improve the quality of its inspection reports, which are below national standards. In particular, the Region needs to more fully document observed deficiencies so that permittees can be properly informed of the problems in follow-up letters.

Finally, nearly 50 percent of the Region's Water Quality Enforcement resources have been allocated to the ESD, but it appears that less than half that number is being used to support the NPDES program. Headquarters recommended that the Water Management Division examine the current distribution of resources and consider reallocating resources to essential NPDES activities, and is pleased to learn that the WMD recently completed negotiations that will allocate resources to ESD in FY 1985 consistent with our workload model.

STATE PROGRAM APPROVAL:

Strengths: Four of the Region's six States are approved to administer the NPDES program; two States (Montana and Wyoming) administer the Federal facilities program, and two States have authority to issue general permits. The Region is planning to conduct annual reviews of the approved States' legal and regulatory authorities consistent with national guidance.

Concerns: Neither of the unapproved States (South Dakota and Utah) is likely to receive NPDES program approval in the near future, although the Region reports that the State of Utah has indicated an interest in pursuing program approval and plans to approach its legislature this Fall with respect to funding.

In addition, none of the States have expressed an interest in assuming authority to administer the pretreatment program--although some States may seek program approval after EPA completes the approval process for all the local programs. In the meantime, the States are providing little assistance on local program approval and implementation. The inability to get States to assume the pretreatment program is of great concern because it results in a very heavy workload for the Region; this situation is likely to be exacerbated as local programs are approved and the Region moves forward with the compliance and enforcement phase of the program. The Region needs to press its States to assume responsibility for the pretreatment program as soon as possible.

In addition, the State of North Dakota does not appear interested in administering the Federal facilities program. While that State claims to have general permit authority, the Region should not allow it to issue general permits until the authority is formally established.

Finally, with respect to the State of Colorado, there are serious concerns about its ability to continue to operate the program consistent with the requirements of the Clean Water Act (CWA). Colorado's legal authorities are in conflict with the Act in several areas, including the issuance of variances, criminal penalties, and conflict of interest provisions. The Agency must seriously consider withdrawal of the State's NPDES authority if the State does not resolves these issues very soon. The State has agreed in principle that these issues must be resolved. The Region should be keeping close track of the State's progress in this regard to ensure that these issues are resolved consistent with CWA requirements.

STATE OVERSIGHT:

Strengths: The Region has developed an oversight strategy and is planning to revise the basic delegation agreements contained in the MOAs of the four approved States. The Region anticipated cooperation from its States in negotiating FY 1985 agreements consistent with the new "National Guidance for Oversight of NPDES Programs."

Concerns: The Region exhibits a reluctance to initiate enforcement actions in approved States when the State has chosen not to act, especially in the State of Colorado. In response, the Region noted that it was currently negotiating a memorandum of understanding with all approved States that will use the criteria and guidelines in the new national guidance to reach agreement with its States regarding when and how EPA will initiate direct enforcement action in the State.

The Region's current oversight is limited primarily to review of DMRs and QNCRs, as well as draft major permits; file audits are now conducted every three years, and these reviews focus on compliance schedules. The Region needs to develop a more formal oversight program consistent with the criteria in the new national guidance, including a more active file audit program in approved States.

HEADQUARTERS FOLLOW UP:

Permit Issuance: OWEP has worked with OWPO to expedite the promulgation of the Secondary Treatment Regulation and issuance of the notice on percent removal.

Pretreatment: OWEP will: set up a national clearinghouse for exchange of information among Regions; explore the problems the Region has identified with respect to the national contractor; and provide additional guidance on local program implementation.

State Program Approval: OWEP will finalize the draft memo entitled "Utah NPDES Delegation."

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OFFICE OF
WATER

OCT 2 3 1984

MEMORANDUM

SUBJECT: FY 1984 NPDES Management Review Findings

Rebecca Hanmer

FROM: Rebecca W. Hanmer, Director
Office of Water Enforcement and Permits

TO: Frank M. Covington, Director
Water Management Division, Region IX

Attached is our final report from the NPDES Management Review we conducted in July. It contains our assessment of the Region's NPDES program and our recommendations for ways to improve the program. It also reflects your responses to our recommendations, as well as your commitments for follow-up action. We will be following your progress through our established management reporting systems, but we would like to hear from you in the meantime if you have results that are particularly noteworthy.

I want to express my personal appreciation to you and your staff for your cooperation throughout the review process. I trust that our recommendations will be useful to you, and will help strengthen the NPDES program in your Region.

Attachment

cc: John C. Wise, DRA
Robert C. Thompson, RC
Glenn Unterberger, Acting Associate
Enforcement Counsel for Water Enforcement

REGION IX
Office of Water Enforcement and Permits
NPDES Management Review Findings
July 1984

PERMIT ISSUANCE:

Strengths: The Region has made excellent progress in eliminating the backlog of expired major NPDES permits, which was identified as an area of major concern last year. In particular, the strategy for elimination of the backlog in California has proved to be highly successful, which is a result of the Region's aggressive effort in this area. In addition, the Region met its own FY 1984 permit issuance commitments for the State of Arizona and for the Trust Territories; the States of Hawaii and Nevada have no backlogs. Finally, the Region is making good use of general permits and contract assistance to eliminate permit backlogs.

Concerns: The Region needs to continue to strive to meet its goals for OCS general permit issuance (and reissuance) on time. Headquarters also noted that the §301(h) review and decision process is significantly affecting major municipal dischargers in the Region. The Region responded that it has encountered difficulty in the review and concurrence for major §301(h) applicants. We understand that, as a result of a recent meeting here at Headquarters, there is now agreement on further definition of the Headquarters concurrence role, which should alleviate the problem in the future and should result in a significant increase in the issuance of permits for § 301(h) applicants.

PRETREATMENT (Local Program Approvals):

Strengths: At the time of the review, the Region had nearly 97 percent of its local programs approved, and, therefore, remains the national leader in this area. The Region also makes good use of contractor assistance.

Concerns: The Region needs to increase its emphasis on audit and oversight of approved local programs. Since this will be an ongoing responsibility that will lie with the geographical units within the Water Management Division, the Region needs to ensure that the involved personnel are adequately trained and that there is close coordination between the "geographics" and the pretreatment coordinator. The Region also needs to place appropriate emphasis on local program enforcement efforts, evaluation of the adequacy of local limits, and effectiveness of local procedures.

PRETREATMENT ENFORCEMENT:

Strengths: The Region has been working with some of its POTWs to encourage action against industrial users where appropriate, and both the Region and the POTWs in the Bay area have initiated a number of administrative enforcement actions against non-integrated electroplaters; these orders required compliance by July 27th or a schedule for compliance by a date certain, as well as a written justification for not being in compliance by the statutory deadline.

Concerns: The Region needs to ensure that administrative order schedules for compliance with pretreatment categorical standards do not extend well beyond the regulatory deadline, and, in cases where a facility proposes an unreasonably long delay, the Region should be prepared to escalate its enforcement response and to consider seeking penalties in appropriate cases. The Region agreed to consult with Headquarters before concluding enforcement orders with extended compliance schedules.

Because of the substantial number of indirect dischargers in the Region, effective implementation of pretreatment standards is, in many ways, the key to effective industrial pollution control. The Region needs to expand its enforcement overview of the major approved local POTWs as much as possible within resource constraints, as well as press the States of Hawaii and California to implement pretreatment program review responsibilities fully. The Region should also consider developing a memorandum of agreement with the State of California even preceding delegation.

ENFORCEMENT ACTIONS:

Strengths: At the time of the review, the Region had one of the lowest levels of nonmunicipal noncompliance in the nation (5 percent), and had already exceeded its FY 1984 fixed-base commitment for major non-municipals. The Region had initiated two civil referrals and was in the final stages of preparing two additional cases. There is a good working relationship between the WMD and the ORC, and the Region's case referral packages are exceptionally well prepared, which minimizes the review time required by Headquarters prior to transmittal of cases to the DOJ.

Concerns: Although the Region has an extremely low rate of noncompliance for nonmunicipals, it has a serious problem with major municipal compliance--particularly in the approved State of California, which has municipal non-compliance rates that far exceed the national average (22 percent, including §301(h) applicants). In addition, at the time of the review, the State of California had not submitted compliance statistics for its P.L 92-500 minor facilities consistent with national guidance; this problem has since been corrected. The problems with municipal compliance in the State of California are especially grave in light of the number of industrial users that discharge to POTWs (see previous section).

Despite the State of California's poor municipal compliance record, the Region does not issue NOVs and tends to rely on informal agreements from the State to take enforcement actions; the State, in turn, frequently relies on informal compliance schedules to address violations (warning letters with a schedule, which are unenforceable). The end result is that many of the current compliance schedules in the State of California are not enforceable by either the Region or the State.

In response to Headquarters concern, the Region maintained that it tracks all instances of significant noncompliance (SNC) and that informal actions are less burdensome and equally effective. According the the end-of-year SPMS report, however, there was a total of 26 facilities nationwide on the SNC fixed-base that were not addressed; Region IX had a disproportionately large share of the total (10 major municipal facilities that were not addressed, including five §301(h) waiver applicants). We also understand the five major municipals that are not seeking §301(h) waivers are being addressed by State action sometime this Fall--well over a year after the facilities were reported in SNC.

According to national policy and guidance, the Region was expected to address these instances of SNC before the end of FY 1984 and through EPA formal enforcement action in lieu of State action if necessary. The Region should use the criteria in the new national policy and the "National Guidance for Oversight of NPDES Programs" to reach agreement with the States on what constitutes timely and appropriate enforcement response, as well as when and how EPA will initiate enforcement action in an approved State.

In addition, the Region is behind in implementing the National Municipal Policy (NMP). The State of California just recently submitted its strategy and inventory, which includes approximately 100 facilities (of which only fourteen are affected by §301(h)); the Region reported that the State planned to classify its noncomplying facilities by mid-October. The Region needs to press its States to complete final, high quality strategies and to develop enforceable compliance schedules for noncomplying municipalities by the end of FY 1985.

Finally, Headquarters recommended that the Region develop a Consent Decree tracking system to help ensure proper follow-up of Consent Decree provisions. We are pleased to learn that the ORC is working to bring the NEIC automated Consent Decree Tracking System on line, and the Water Division plans to develop its own system if the NEIC system gets stalled.

COMPLIANCE REVIEW AND ENFORCEMENT PROCESS:

Strengths: The Region has updated its Enforcement Management System (EMS), and has developed both an EMS and cooperative agreement for the Pacific Trust Territories; the Region is also working with the State of California to incorporate the EMS into the State/EPA agreement, which was under negotiation at the time of the review. In addition, the Region has an established system for meeting with its States on a monthly and quarterly basis to discuss enforcement actions, and plans to use the §106 grant process to negotiate State commitments for enforcement actions.

The WMD conducts all EPA inspections, which appear to be appropriately selected, executed, and documented. The Region also uses DMR QA results to target PAIs.

Concerns: At the time of the review, the Region's EMS document did not contain specific criteria by which to select the appropriate enforcement response to a given violation. The Region reports that its updated EMS now references the national enforcement response criteria, which will apply uniformly to different types of violations. The Region also needs to establish criteria for determining when it will take direct enforcement action in an approved State; this is especially important given the geographic organization of the Regional staff and the problems discussed above.

The Region does not use PCS as a compliance review and management tool and is behind in entering DMR data into the system, including some of the California DMR data. Since the Region does not have the resources to review DMRs from the State of California, which represents 80 percent of the Region's major permits, it is essential that complete, up-to-date data be maintained in PCS. Headquarters is pleased to learn that the Region is working with the California Regional Boards so they will have direct access to a computer system in support of PCS. We are also pleased to learn that the Region has made progress in entering the California data into PCS, and plans to complete the task by the end of 1984.

STATE PROGRAM APPROVALS:

Strengths: The Region has a good record in approving State NPDES programs.

Concerns: The Region needs to push to resolve the legal authorities issues in the State of California, which is part of a national effort to assure continuing adequacy of State NPDES programs under §402 of the Clean Water Act. To date, agreed upon materials have not been supplied to OWEP. In addition, the Region needs to continue to press the State of California to take the steps necessary to assume authority for the pretreatment program.

STATE OVERSIGHT:

Strengths: The Region conducts detailed reviews of the nine Regional Water Boards in the State of California.

Concerns: The Region conducts only one detailed compliance/enforcement review in California per quarter, which means that each of the nine California Water Boards is audited only once every two years. Given the autonomy of these Boards, Headquarters recommended more frequent audits to ensure effective oversight of the NPDES program. In response, the Region maintains that quality is more important than frequency. Headquarters, however, does not agree that quality must be sacrificed and continues to encourage the Region to conduct more frequent audits of key Boards--even if it must reduce the scope of the reviews for the Boards with fewer major permittees in their jurisdictions in order to concentrate its efforts on the larger Boards.

Headquarters also recommended that the Region work with the State of California to ensure effective policy direction and oversight of the nine separate Boards. The Region responded that it meets with the State on a monthly basis to discuss issues related to permits and compliance, and that it expects to see improved working relations as a result of the newly executed EPA/State enforcement agreement for the State of California. Since the Regional Boards are basically autonomous, however, Headquarters recommends that the Region be especially vigilant in its oversight of activities in the

State in order to ensure that the State is actively communicating policy directions from Headquarters down to the Regional Boards.

HEADQUARTERS FOLLOW UP

Permits: OWEP will explore ways to facilitate variance decisions for FDF and §301(g) applicants. In addition, in response to concerns raised by Region IX and others, OWEP will place greater emphasis on training for permit writers and reviewers.

the Region, the Water Division should use the new national policy in conjunction with the July 1984 "National Guidance on Oversight of NPDES Programs" to develop a systematic and tiered approach to management of State performance adapted to the Region's unique organizational structure.

HEADQUARTERS FOLLOW UP:

Permit Issuance: The Permits and Enforcement Divisions in OWEP will work with the Region to verify the major industrial dischargers identified in PCS, especially major placer mines. OWEP will work with OWRS to assure adequate and timely responses to requests for effluent guidelines assistance, especially for OCS general permits. OWEP will also work with OGC to improve the timeliness of general permit reviews and to assure that Headquarters comments are appropriate to the stage of permit development. Finally, OWEP will work with OPPE and OWPO regarding 301(h) permit tracking and commitments in FY 1985.

OWEP will: work with the Region on developing an appropriate agenda for a BPJ workshop; explore Washington's concern about pH requirements in effluent guidelines limitations; advise the Region of the status of development of a ballast water general permit; discuss the question of more stringent State permit provisions vis-a-vis the regulatory requirement that the affirmative defense provision be incorporated into a permit; and arrange assistance to the State of Oregon for issuance of selected major industrial permits.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OFFICE OF
WATER

SEP 17 1984

MEMORANDUM

SUBJECT: FY 1984 NPDES Management Review Findings

Rebecca Hanmer

FROM: Rebecca W. Hanmer, Director
Office of Water Enforcement and Permits

TO: Robert Burd, Director
Water Division, Region X

Attached is our final report from the NPDES Management Review we conducted in late May and early June. It contains our assessment of the Region's NPDES program and our recommendations for ways to improve the program. It also reflects your responses to our recommendations, as well as your commitments for follow-up action. We will be following your progress through our established management reporting systems, but we would like to hear from you in the meantime if you have results that are particularly noteworthy.

I want to express my personal appreciation to you and your staff for your cooperation throughout the review process. I trust that our recommendations will be useful to you, and will help strengthen the NPDES program in your Region.

Attachment

cc: Edwin Coate, DRA
James Moore, RC
Glenn Unterberger, Acting Associate
Enforcement Counsel for Water Enforcement

REGION X

Office of Water Enforcement and Permits
NPDES Management Review Findings
June 1984

PERMIT ISSUANCE:

Strengths: The Region is well on its way to meeting its FY 1984 commitment for major municipal permits. The Region is also continuing its efforts to issue a general permit for seafood processors and individual placer mine permits, which should result in a significant reduction in the number of new source and new discharge applications on hand. In addition, the Region has undertaken an intensive effort to reissue permits for placer mines, seafood processors, and fish hatcheries, which comprise 80 percent of its FY 1984 commitment for industrial permits. Permitting resources are effectively used, the permit program is fully coordinated with the Region's EIS staff, and all draft major permits prepared by the approved States of Oregon and Washington are reviewed by the Region.

Concerns: In order to meet its FY 1984 commitment, Region X must continue to pursue aggressively the issuance of major industrial permits. In addition, at the time of the review, the approved States of Oregon and Washington were behind in issuing permits to eliminate the backlog; the issuance of nearly half of Washington's major municipal permits is contingent upon final §301(h) decisions. Headquarters recommended that the Region place increased emphasis on permitting in those States in order to approach its FY 1984 commitments and to assure the elimination of the backlog of major industrial permits by the end of FY 1985. The Region indicated that the States have assigned high priority to issuing major permits, and expressed its confidence that the States would eliminate the backlog by the end of FY 1985.

Also at the time of the review, the State of Alaska posed a special problem to the Region: issuance of three Alaskan OCS general permits for "produced waters" was being delayed pending effluent guidelines or contract assistance, and elimination of the backlog of Alaskan municipal permits was contingent upon completion of the §301(h) decision process. Following the review, the Region indicated that it no longer intended to delay issuance of OCS permits pending effluent guidelines, which will partially mitigate the problems in Alaska.

Finally, the Region needs to apply the "Policy for Development of Water Quality-based Permit Limitations for Toxic Pollutants," in order to improve its ability to identify the need for establishing toxicity based effluent limits.

PRETREATMENT (Local Program Approvals):

Strengths: The Region is effectively managing the approval phase of the program, and should meet its FY 1984 commitment to approve all required local programs; the approved State of Oregon has already completed approval of all its 21 required local programs. In addition to accelerating its approval activity, the Region is using consistent review criteria, which has improved the quality of the local programs that are being approved.

Concerns: The Region committed to approving the pretreatment program for the State of Washington in FY 1984. At the time of the review, the State had no staff to administer the program and certain large cities were, in effect, receiving an exemption from pretreatment requirements pending approval of the State program. Headquarters asked the Region to motivate the State to address the staffing issue so as to effect a high-quality program approval before the end of the fiscal year. Headquarters also recommended that, as the current control authority, the Region should initiate enforcement actions against the "exempt" cities to establish approved local pretreatment programs as soon as possible. The Region responded that, following the review, it had advised the State of Washington by letter that, unless the State moved forward expeditiously, the Region intended to require the exempt cities to establish local programs. The Region needs to follow up vigorously, and, if necessary, to put these cities on enforceable schedules for program development.

In addition, the Region needs to move ahead with the implementation phase of the program by conducting audits of the local programs that were approved by EPA; the first audit is scheduled to occur before the end of the fiscal year (Seattle Metro).

ENFORCEMENT ACTIONS:

Strengths: The Region's reported rates of noncompliance for municipals and non-municipals are well below the national averages, and, by the end of the third quarter, it had met or exceeded its targets for all categories of facilities. Three civil referrals had been initiated by the end of the second quarter, and the referral packages were of high quality.

The Deputy Regional Administrator (DRA) meets weekly with the Regional Counsel (RC) and the Division Directors to review the status of enforcement actions. In addition, the Region has an excellent system with milestones for tracking progress on enforcement actions, which is used by the RC as an effective management tool and assures timeliness of responses to noncompliance. Coordination between the Water Management Division (WMD) and the ORC is excellent.

Concerns: The Region's issuance of AOs is considerably behind last year's. While the high rate of issuance in FY 1983 was due primarily to enforcement efforts against Alaskan placer mines, the Region had issued only 5 AOs by the end of the second quarter of FY 1984. In addition, the Region has not issued any NOVs since FY 1979 because it provides approved States with advance notice of its intent to issue an NOV in lieu of any other formal action. While it appears that this practice results in the States initiating enforcement action within the required timeframe, it requires close Regional oversight and follow up to ensure that the State enforcement actions are appropriate as well as timely.

The Region needs to scrutinize carefully the enforcement commitments from the State of Oregon. The State appears to rely heavily on inspections to uncover violations, and then to engage in extensive discussions with the operators to correct the deficiencies rather than initiating formal enforcement action. The Region needs to work with the State to ensure that violations are detected and are responded to in a timely and appropriate manner.

Finally, while the Region has worked with its States to implement the National Municipal Policy, Headquarters still has not received final strategies for any of the States; NMP implementation is especially slow in the States of Oregon and Washington. Management in the Region needs to exert more effort to get complete, final State strategies immediately in order to incorporate the necessary commitments into the States' FY 1985 §106 work plans and to ensure that noncomplying facilities covered by the Policy are on enforceable schedules no later than the end of FY 1985.

COMPLIANCE REVIEW AND ENFORCEMENT PROCESS:

Strengths: The Region makes good use of automated data systems for compliance review and follow-up, is making good progress in converting to PCS, and is verifying data through concurrent retrievals of data in PCS and the Regional system (PSF). In addition, the Region is now exploring ways to use watershed information to determine stream segments that are subject to high water quality impacts from violations by several different facilities within a single watershed.

The Region reviews the QNCRs at both the Branch and Division levels, which generally results in very high quality QNCRs. In addition, the Region's 1984 Enforcement Management System (EMS) is well-prepared and lays out a compliance review process that adequately controls information while making optimum use of limited staff resources. Finally, the Environmental Services Division (ESD) is providing good inspection support, which focuses primarily on the unapproved States of Alaska and Idaho; inspection reports are well documented and turnaround times are good.

Concerns: At the time of the review, the Compliance Section was being headed by an individual who simultaneously served as a supervisory attorney within the ORC. While this individual was highly capable, the part-time supervision of the compliance staff was resulting in inadequate management oversight of the Region's compliance and enforcement activities and decisions. The Region shared Headquarters concern over this situation, terminated the assignment, and is now advertising for a full-time replacement.

At the time of the review, the Region had completed only 26 percent of its annual commitment for inspections. The Region indicated that it typically schedules the majority of its compliance inspections during the last half of the fiscal year, and that it fully expects to meet its end-of-year commitment. Of further concern is the fact that the Region uses resource intensive CSIs to follow-up DMR QA deficiencies. The Region is encouraged to use PAIs, which directly address the deficiencies and would free up scarce resources for CSIs to verify other types of violations. Furthermore, the Region does not perform any biomonitoring inspections, and needs to improve its capabilities in this area as the Region moves into second round permit issuance.

STATE PROGRAM APPROVAL:

Concerns: The States of Alaska and Idaho continue to exhibit little interest in seeking authority to administer the NPDES program. In addition, the Region is committed to modifying the Washington NPDES program to include Federal facilities and administration of a State-run pretreatment program, which is critical to the timely and effective implementation of adequate local programs. Both of these commitments are in jeopardy due to slow action on the part of the State and an impasse over authority on Indian lands.

The proposed NPDES revisions to the Oregon MOA have been of concern because of the numerous inconsistencies with the Federal regulations. Since the time of the review, there have been ongoing conversations regarding the inconsistencies and Headquarters now understands that the NPDES revisions will be handled separately and later than the new UIC MOA.

STATE OVERSIGHT

Strengths: The Region was a pioneer in developing annual "Compliance Assurance Agreements" with its States, and the document produced by the Region was used in the development of the national guidance. In addition, the Region has completed a comprehensive evaluation of the Washington NPDES program, and is encouraged to proceed with the planned evalution of Oregon--with particular emphasis on the pretreatment program and industrial permitting.

Concerns: Although the States of Oregon and Washington were two of the originally approved NPDES programs, their performance in reissuing permits thus far in FY 1984 has been poor and should be addressed immediately by the Region. With respect to compliance and oversight in these two States, the respective roles of the Water Division and the Operations Offices were not clear, which has contributed to a number of deficiencies. For example, these States were not preparing their QNCRs consistent with the time frames in the Federal regulation (although the most recent report from the State of Washington was corrected); the Region does not have a systematic process for receiving adequate information from the Operations Offices on compliance schedules imposed by the States; as noted above, there are lengthy delays with respect to implementation of the National Municipal Policy; and the Region is not conducting audits of State records and does not audit the Operations Offices to assure consistent levels of compliance review, decision-making, and follow up.

We are pleased to learn that, since our review, the Region has completed a special audit in the State of Oregon. The Region also reported that it plans to ask the NEIC to assist in an audit of the State of Washington. Assuming that the Operations Offices continue to play an important role in

United States
Environmental Protection
Agency

Office of
Public Affairs (A-107)
Washington DC 20460

EPA

Environmental News

FOR RELEASE: WEDNESDAY, JULY 25, 1984

Robin Woods (202) 382-4377

EPA ISSUES GUIDANCE FOR STATE ENFORCEMENT OF FEDERAL LAWS

U.S. Environmental Protection Agency enforcement guidance with recommended time periods for taking action has been sent to EPA's 10 regional offices to be used in establishing state enforcement agreements.

The guidance covers air, water, hazardous waste and pesticide programs, and will serve as the basis for enforcement agreements the agency hopes to reach with all states by October.

According to Alvin L. Alm, EPA Deputy Administrator, "When developed and implemented, the new agreements should improve the capacity of the states and EPA to achieve and maintain high levels of compliance with the nation's environmental laws."

The agreements will identify state performance expectations and the standards EPA will use to evaluate state performance, determine which violations will require penalties or equivalent sanctions, indicate when EPA will step in and take federal enforcement action, and establish time frames for initiating and escalating enforcement action against significant violators.

For example, states authorized to manage and enforce federal air standards generally will be expected to notify a major violating facility within 45 days from detection of a violation. If the source is not in compliance by the 120th day from detection of the violation, states will be expected to take more formal enforcement action, such as issuing an administrative order or developing a judicial case.

These specified time frames are not considered absolute deadlines but general targets to be used to manage enforcement programs and trigger a review of progress in specific cases. The schedules also can indicate where EPA may have to consider federal enforcement action.

(more)

The guidance defines EPA's expectations for state performance. State performance will be assessed in terms of how well the state is identifying and getting violators to comply through the use of an up-to-date list of significant violators, established time frames for taking enforcement actions, and the use of well-defined compliance measures once an enforcement action has been taken.

The new EPA/state enforcement agreements will vary somewhat from state-to-state, program-to-program, accommodating special state needs when necessary.

The majority of states now assume day-to-day management and enforcement of one or more federal environmental programs. Under the major federal environmental statutes, states are authorized and encouraged to manage and enforce established federal environmental programs. States may assume such responsibility after demonstrating legal and resource capabilities and after approval from EPA. However, EPA is still accountable to Congress for upholding federal environmental standards and must maintain oversight of the state programs.

In states which have already been formally delegated enforcement responsibilities in one or more programs, the agreements will further augment and clarify federal and state responsibilities and expectations. In those program areas which have not been delegated, or in states where no formal delegation of any program has occurred, the agreements can be the first step toward forming a joint federal/state partnership.

The guidance also establishes when federal enforcement action is appropriate, either initially or when a state action is insufficient. According to the guidance, federal action might be expected in those cases where a facility is in violation of an EPA order or consent decree, when a case is nationally significant or sets a legal precedent, or in cases which involve significant health or environmental damage, repeat violators or interstate issues, or when a state requests federal action.

In addition, the guidance clarifies and makes consistent state reporting to ensure effective EPA oversight. Since the bulk of EPA's programs are now delegated to the states, state data are essential to EPA's ability to provide a picture of national compliance and enforcement efforts. The reporting will enable EPA for the first time to provide the public with a credible national picture of the combined state/federal compliance and enforcement efforts.

R-154

# # #

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

JUN 26 1984

OFFICE OF
THE ADMINISTRATOR

MEMORANDUM

SUBJECT: Implementing the State/Federal Partnership in Enforcement: State/Federal Enforcement "Agreements"

FROM: Alvin L. Alm Alvin L. Alm
Deputy Administrator

TO: Assistant Administrators
Regional Administrators
Regional Enforcement Contacts
Steering Committee on the State/Federal Enforcement Relationship
Associate Administrator for Regional Operations

I am pleased to transmit to you a copy of the Agency's Policy Framework for State/Federal Enforcement "Agreements." This document, along with the program specific guidance identified in the Appendix to the Policy, will provide the basis for implementing an effective State/Federal enforcement relationship through national program guidance and Regional/State "agreements." The Policy Framework and related program guidance reflect an extraordinary effort for which I commend the members of the Steering Committee on the State/Federal Enforcement Relationship and staff of the Office of Enforcement and Compliance Monitoring.

The Policy Framework clearly identifies oversight criteria and measures for assessing good compliance and enforcement program performance, criteria for direct federal enforcement, notification and consultation protocols, and state reporting requirements. In addition, each media program has succeeded in identifying what constitutes timely and appropriate enforcement response. When fully developed and implemented, these State-specific enforcement "agreements" should result in significant improvements in the combined capacity of the States and EPA to achieve and maintain high levels of continuing compliance and to sustain a stable, predictable enforcement presence.

I have informed the State Associations and the members of the Steering Committee that I personally intend to see that each Region and program follows through in applying the guidance provided by the Policy Framework and national program guidance in the form of "agreements" Regions will be formulating with the States. The success of these efforts will depend largely on the continued support and attention of Regional and Headquarters senior management. We are making a substantial commitment to strengthening the State/Federal enforcement relationship and our investment in this partnership should continue to grow with the development of the "agreements." Our experience over the next fiscal year will provide us with valuable feedback which will better enable us to refine the Policy Framework, our national program guidance, and the "agreements" themselves.

Specifically, to ensure the success of this effort I ask:

o Assistant Administrators:

- to issue final program guidance by June 30 in conformance with the Policy Framework;
- to report to me by July 16, 1984 on how existing information and management systems will be used to follow progress of cases against milestones for timely and appropriate enforcement action; and
- to continue to provide staff support to Regions, answering questions and providing support throughout the process.

o Regional Administrators:

- to have "agreements" in place by the beginning of FY 1985 and submit to OECM summary indices of where the "agreements" can be located;
- to submit copies of one sample "agreement" per Region to OECM before the first quarter of FY 1985 so OECM can transfer useful ideas from one Region to another; and
- to surface significant problems to OECM for senior management attention.

o Office of Enforcement and Compliance Monitoring:

- to monitor our progress in implementing these "agreements," raising issues and problems as appropriate, reporting to me on progress, and fielding questions on the process;
- to implement the communications strategy e.g., distributing copies to States through State Associations;

- to review and recommend to me refinements to the Policy Framework and "agreements" process, as necessary, by April 15, 1985 in consultation with the Steering Committee; and

- to provide leadership and staff support to the Steering Committee on long-term issues that were identified by them.

Attachments

This is an extremely important step.
I would appreciate all of you giving
this Policy Framework your personal
attention.

POLICY FRAMEWORK FOR STATE/EPA ENFORCEMENT "AGREEMENTS"

Achieving and maintaining a high level of compliance with environmental laws and regulations is one of the most important goals of federal and state environmental agencies, and is an essential prerequisite to realizing the benefits of our regulatory programs. While States and local governments have primary responsibility for compliance and enforcement actions within delegated or approved States, EPA retains responsibility for ensuring fair and effective enforcement of federal requirements, and a credible national deterrence to non-compliance. An effective State/Federal partnership is critical to accomplishing these goals, particularly given limited state and federal resources. The task is difficult and one of the most sensitive in the EPA/State relationship, often compounded by differences in perspectives on what is needed to achieve compliance.

To establish an effective partnership in this area, and implement the State/Federal enforcement relationship envisioned in the Agency Oversight and Delegation policies, the Deputy Administrator has called for State-specific enforcement "agreements" to be in place by the beginning of FY 1985 which will ensure there are: (1) clear oversight criteria, specified in advance, for EPA to assess good State --or Regional-- compliance and enforcement program performance; (2) clear criteria for direct federal enforcement in delegated States with procedures for advance consultation and notification; and (3) adequate State reporting to ensure effective oversight.

This document is the Agency's policy framework for implementing an effective State/Federal enforcement relationship through national program guidance and Regional/State "agreements". It is the product of a Steering Committee effort involving all major national EPA compliance and enforcement program directors, State Associations, State officials from each of the media programs, and the National Governor's Association. EPA anticipates that the relationship, and the use of the "agreements" first established in FY 1985, will evolve and improve over time. They will be reviewed and updated where necessary on an annual basis. There are several areas which the Steering Committee identified for longer term evaluation and development. The policy framework also will be subject to mid-course review and possible refinement during FY 1985.

Policy Framework Overview

The policy framework applies both to headquarters program offices in their development of national guidance and to Regions in tailoring program guidance to State-specific needs and "agreements." The policy framework is divided into six sections, to address the following key areas:

A. State/Federal Enforcement "Agreements": Form, Scope and Substance (pages 4-7)

This section sets forth the priorities for Regions and States to develop enforcement "agreements," the areas that should be discussed and the degree of flexibility that Regions have in tailoring national guidance to state-specific circumstances.

B. Oversight Criteria and Measures: Defining Good Performance (pages 8-14)

This section is primarily addressed to EPA's national programs, setting forth criteria and measures for defining good performance generally applicable to any compliance and enforcement program whether administered by EPA or a State. It forms the basis for EPA oversight of State programs. A key new area that should receive careful review is the definition of what constitutes timely and appropriate enforcement response, Section B, Criterion #5, pages 11-13.

C. Oversight Procedures and Protocols (pages 15-16)

This section sets forth principles for EPA's approach and process for and follow-up to our oversight responsibilities.

D. Criteria for Direct Federal Enforcement in Delegated States (pages 17-20)

This section sets forth the factors EPA will consider before taking direct enforcement action in a delegated State and what States may reasonably expect of EPA in this regard including the types of cases and consideration of whether a State is taking timely and appropriate enforcement action. It also establishes principles for how EPA should take enforcement action so that we can be most supportive of strengthening State programs.

E. Advance Notification and Consultation (pages 21-23)

This section sets forth EPA's policy of "no surprises" and what arrangements must be made with each State to ensure the policy is effectively carried out by addressing planned inspections, enforcement actions, press releases, dispute resolution and assurances that publicly reported performance data is accurate.

F. State Reporting (pages 24-28)

This section sets forth seven key measures EPA will use, at a minimum, to manage and oversee performance by Regions and States. It summarizes state and regional reporting requirements for: (1) compliance rates; (2) progress in reducing significant non-compliance; (3) inspection activities; (4) formal administrative enforcement actions; and (5) judicial actions, at least on a quarterly basis. It also discusses required commitments for inspections and for addressing significant non-compliance.

In addition, it sets forth state and regional requirements for recordkeeping and evaluation of key milestones to assess the timeliness of their enforcement response and penalties imposed through those actions.

Appendix

The Appendix provides a summary index of what national program guidance has been or will be issued by programs to address the areas covered by the Policy Framework for State/EPA Enforcement "Agreements."

A. STATE/FEDERAL ENFORCEMENT "AGREEMENTS": FORM, SCOPE, AND SUBSTANCE

This section sets forth the form, scope and substance of the State/Federal Enforcement "Agreements" as well as the degree of flexibility Regions have in tailoring national policy to individual States.

1. What Form Should the "Agreements" Take?

We do not anticipate the need for a new vehicle or document for the State/Federal enforcement "agreements." Wherever possible, State/Federal "agreements" should be set forth in one or more of a number of existing formats: grant agreements, State/EPA Agreements, Memoranda of Agreement or Understanding or a statement of Regional Office operating policy. To the extent the areas covered by this policy framework translate into specific output commitments and formal reporting requirements, they may belong in the grant agreements as specified in national program grant guidance.

2. What is the Scope of the "Agreements"?

This guidance and the State/EPA "agreements" cover all aspects of EPA's civil compliance and enforcement programs, including those activities involving federal facilities. The criminal enforcement program is not included and will be addressed elsewhere.

Discussions between EPA Regions and States should cover the minimum areas listed below:

- Oversight Criteria and Measures: Good Performance Defined --See Section B.
- Oversight Procedures and Protocols -- See Section C.
- Criteria for Direct EPA Enforcement -- See Section D.
- Procedures for Advance Notification and Consultation -- See Section E.
- Reporting Requirements -- See Section F.

However, Regions and States are not expected to duplicate national program guidance in their "agreements" -- we are not looking for lengthy documents. Written "agreements" resulting from these discussions would cover topics which are not clearly specified elsewhere. If not otherwise specified, national policy will apply and should be so stated in the state "agreements."

For FY 1985, the Regions and States should reflect the following priorities in discussions and "agreements":

- Defining expectations for timely and appropriate enforcement action -- particularly: (a) establishing a management framework with the State for following progress for significant non-complier cases against timely and appropriate milestones; and (b) identifying where penalties or equivalent sanctions are important;

- Reporting of State data -- ensuring timeliness and resolving definitional and quality control problems in reported data; and

- Establishing Protocols for Advance Notification and Consultation.

Oversight criteria would generally be provided in national program guidance but Regions may need to tailor definitions of timely and appropriate action and other specific areas of concern that are unique to an individual State, including areas targeted for improvement. Similarly, while this document sets forth general criteria for direct EPA enforcement, programs and Regions may need to tailor the criteria not only to define timely and appropriate enforcement action, but also to address environmental and other priorities of the program, Region or State.

Each "agreement" should be careful to note that nothing in them would constitute or create a valid defense to regulated parties in violation of environmental statutes, regulations or permits.

3. What Flexibility do Regions Have?

Regions must be allowed substantial flexibility to tailor "agreements" to each state. However, that flexibility should be exercised within the framework of national program policy and the Agency's broad objectives. Specifically,

Definitions: Regions should reach agreement with States as to how certain state enforcement actions will be reported to and interpreted by EPA. This should be based upon the essential characteristics and impact of state enforcement actions and not merely upon what the actions are called. Where penalties are required, for example, state actions for equivalent sanctions also are acceptable. National program guidance setting forth consistent criteria for this purpose should be followed. Also, see the discussion in Section B. pages 11-13.

Timeliness: The national program guidance on key milestones and timeframes should be applied to all States with adjustments to accommodate each state's laws and procedures. Such adjustments can be important particularly where the proposed enforcement action cannot possibly take place within the proposed timeframes or where a State chooses to address problems more expeditiously than the federal guidelines. Other adjustments should not be made solely because a state program consistently takes longer to process these actions due to constraints other than procedural requirements, e.g., resources. However, if this is the case the timeframes should serve as a basis for reviewing impediments with the State to identify how problems can be overcome and to explore ways over time for the state program to perform more efficiently.

The timeframes are not intended to be rigid deadlines for action, but rather are: (1) general targets to strive for in good program performance; (2) trigger points that EPA and States should use to review progress in individual cases; and (3) presumptions that, if exceeded, EPA may take direct enforcement action after consideration of all pertinent factors and consultation with the State. It is not the Agency's intention to assume the major enforcement role in a delegated State as a result of these timeframes. The trigger points should be realistic expectations, but within modest variance from the national goals. It must also be realized that in some programs we need experience with the timeframes to assess how reasonable and workable they really are and further, that judgments on what is a reasonable timetable for action must ultimately be case specific. For example, complex compliance problems may require longer-term studies to define or achieve an appropriate remedy.

Appropriate Enforcement Response: National program guidance on appropriate enforcement response should be followed. There is usually sufficient flexibility within such guidance to allow the exercise of discretion on how best to apply the policies to individual cases. The Agency is making every effort to set forth a consistent national policy on enforcement response for each program. It is therefore essential that in setting forth clear expectations with States that this guidance not be altered. For example, program guidance should not be altered simply because of differing State views on where penalties should be assessed. State actions imposing equivalent sanctions, however, are acceptable e.g., license revocation. Further, with limited exceptions noted on page 18, EPA will not override a State action based upon penalty amounts in the absence of clear guidance applicable to both States and Regions. See discussion in Section D. page 18.

Procedures and Protocols: Regions and States should have maximum flexibility to fashion arrangements that are most conducive to a constructive relationship, following the broad principles outlined in this document.

Adjusting outputs and commitments to State resources: Because the FY 1985 Budget has already been developed, the Oversight Criteria and Protocols should be implemented so as not to impose additional resource requirements or expected output levels for FY 1985 beyond those already established for States. This does not apply to the minimum reporting requirements identified by the Steering Committee to ensure effective oversight. In FY 1985 this policy framework is intended to affect how we do business, not how much of it we do. In addition, while of necessity EPA must emphasize commitments by States to address significant non-compliance and major sources of concern, Regions should be sensitive to the broad concerns of State programs including minor sources and the need to be responsive to citizen complaints.

4. What Does it Mean to Reach "Agreement"?

To the extent possible, these "agreements" should reflect mutual understandings and expectations for the conduct of federal and state enforcement programs. Agreement may not be possible in all States. At a minimum, EPA Regions must: (1) be clear and ensure there are "no surprises"; (2) make arrangements with the States so that actions taken are constructive and supportive; and (3) tailor the application of the national program guidance to the States' programs and authorities. Where mutual agreement cannot be achieved, clear unilateral statements of policy will have to suffice, with commitments to try to seek further agreements over time. Areas where agreements have not been reached should be clearly identified for senior Agency management attention.

B. OVERSIGHT CRITERIA AND MEASURES: DEFINING GOOD PERFORMANCE

The first step to achieving strong and effective national compliance and enforcement programs is a clear definition of what constitutes good performance. Because each of EPA's programs embodies unique requirements and approaches, good performance must be defined on a program-specific basis. Adjustments also must be made in applying criteria and measures to the States and Regions, based upon their environmental problems and authorities. Nevertheless, there are several basic elements which will generally be applicable to a good compliance and enforcement program in any of our media-specific programs. The following outlines the criteria and measures that form that common framework for defining a quality program. The framework is to serve as a guide to the national programs as they develop, in cooperation with Regions and States, the criteria they will use to assess their performance in implementing national compliance and enforcement programs.

The framework is not intended to be adopted word-for-word by the programs, nor is there any format implied by this list. What is important are the concepts. This section addresses only the elements of a quality program. Issues such as how oversight should be conducted are addressed in section C. Each national program may choose to focus on certain elements of performance in a given year.

These criteria and measures are intended to apply to the implementing agency, that is, to an approved or delegated State or to an EPA Region in the event a program is not "delegated." Our philosophy is that EPA should be held to the same standards as we would apply to the States if they were implementing the program. Portions may also apply to those non-approved or non-delegated States which are administering portions of the programs under cooperative agreements.

CRITERION #1 Clear Identification of and Priorities for the Regulated Community

A quality compliance and enforcement program is based upon an inventory of regulated sources which is complete, accurate and current. The data should in turn be accessible, preferrably in automated data systems which are accurate, and up-to-date. The scope of coverage for the inventory should be appropriately defined by each program as it is probably not feasible to identify every person or facility subject to environmental laws and regulations, especially when they are numerous small sources. Those priorities should be clearly established in national program guidance and tailored to State-specific circumstances as appropriate.

The inventory of sources should be utilized as a basis for a priority setting system established by the administering agency. These priorities should reflect and balance both national priorities and state-specific priorities. A quality program uses those priorities as a basis for program management. National priorities are generally set forth in EPA's Operating Year Guidance and program specific compliance and enforcement strategies. State-specific priorities should address not only efforts to achieve broad based compliance but also should assess the expected environmental impact of targeting enforcement and compliance monitoring to specific geographic areas or against certain source types. Ambient monitoring systems can provide an important point of departure for priority setting.

CRITERION #2 Clear and Enforceable Requirements

Requirements established through permits, administrative orders and consent decrees should clearly define what a specific source must do by a date certain, in enforceable terms. It is not EPA's intention in this policy framework to suggest that EPA conduct a top down review of a State or Regional program's entire regulatory program. However, areas where provisions cannot be enforced due to lack of clarity or enforceable conditions should be identified and corrected.

CRITERION #3 Accurate and Reliable Compliance Monitoring

There are four objectives of compliance monitoring:

- reviewing source compliance status to identify potential violations;
- helping to establish an enforcement presence;
- collecting evidence necessary to support enforcement actions regarding identified violations; and
- developing an understanding of compliance patterns of the regulated community to aid in targeting activity, establishing compliance/enforcement priorities, evaluating strategies, and communicating information to the public.

The two factors in assessing the success of a compliance monitoring program are coverage and quality.

Coverage: Each program's strategy should reflect a balance between coverage: (1) for breadth, to substantiate the reliability of compliance statistics and establish an enforcement presence; and (2) for targeting those sources most likely to be out of compliance or those violations presenting the most serious environmental or public health risk.

Inspections: Each administering agency should have a written and reviewable inspection strategy, reviewed and updated annually, as appropriate: in some programs a multi-year strategy may be preferable. The strategy should demonstrate the minimum coverage for reliable data gathering and compliance assessment set forth in national program guidance and meet legal requirements for a "neutral inspection scheme". The strategy should also address how the inspections will most effectively reach priority concerns and potential non-compliers including the use of self reported data, citizen complaints and historic compliance patterns. The strategy will be assessed on whether it embodies the appropriate mix of categories of inspections, frequency and level of detail. Inspections should then be carried out in a manner consistent with the inspection strategy.

Source Self-Monitoring and Reporting: The administering agency should ensure that minimum national requirements for source self-monitoring and reporting are imposed and complied with, either through regulation or permit condition, pursuant to national guidance as appropriate.

Quality: Each program should define minimum standards for quality assurance of data and data systems, and timely and complete documentation of results. At a minimum, each program should have a quality assurance program to insure the integrity of the compliance monitoring program. This quality assurance program should address essential lab analysis and chain of custody issues as appropriate.

Inspections: Inspectors should be able to accurately determine the nature and extent of violations, particularly the presence of significant violations. Documentation of inspection findings should be timely, complete and able to support subsequent enforcement responses, as appropriate to the purpose of the inspection. Federal oversight inspections should corroborate findings. Oversight inspections are a principal means of evaluating both the quality of an inspection program and inspector training.

Source Self Monitoring: The administering agency should have a strategy for and implement quality assurance procedures, with sufficient audits and follow-up action to ensure the integrity of self-reported data.

CRITERION #4 High or Improving Rates of Continuing Compliance

The long-term goal of all of our compliance and enforcement programs is to achieve high rates of continuing compliance across the broad spectrum of the regulated community. Until that goal is achieved, compliance rates can fluctuate for several reasons. In assessing how well an administering agency is meeting the goal of high or improving rates of compliance, other factors must be assessed in addition to the overall compliance rate. Improved inspections or inspection targeting often can result in a temporary decrease in rates of compliance until newly found violations are corrected and the regulated community responds to the more vigorous attention to specific compliance problems. In these instances, a decrease in the rate of compliance would be a sign of a healthy compliance and enforcement program. At a minimum, programs should design mechanisms to track the progress of all sources out of compliance through major milestones up to achieving final physical (full) compliance with applicable regulations and standards.

Program quality must also be assessed in terms of how well the program is returning significant non-compliers to compliance. The use of lists of significant violators and specific commitments to track and resolve significant non-compliance should be part of the planning process of the administering agency, and, between States and Regions. The lists should be developed and continually updated each fiscal year and sources on it tracked through to final physical compliance.

CRITERION #5 Timely and Appropriate Enforcement Response

Quality enforcement programs ensure that there is timely and appropriate enforcement response to violations. Expectations for what constitutes timely and appropriate action should be based upon national program guidance, tailored to the procedures and authorities in a given State and assessed in regard to particular circumstances surrounding each instance of violation. National programs must establish benchmarks or milestones for what constitutes timely and appropriate enforcement action, forcing progress in enforcement cases toward ultimate resolution and full physical compliance. This concept is a key new feature to our compliance and enforcement program implementation.

In designing oversight criteria for timely enforcement response, each program will attempt to capture the following concepts:

1. A set number of days from "detection" of a violation to an initial response. Each program should clearly define when the clock starts, that is, how and when a violation is "detected."

2. Over a specified period of time, a full range of enforcement tools may be used to try to achieve compliance, including notices of violation, warning letters, phone calls, site visits, etc.. The adequacy of these responses will be assessed based upon whether they result in expeditious compliance.

3. A prescribed number of days from initial action within which a determination should generally be made, that either compliance has been achieved or an administrative

enforcement action has been taken (or a judicial referral has been initiated, as appropriate) that, at a minimum:

- Explicitly requires recipient to take some corrective/ remedial action, or refrain from certain behavior, to achieve or maintain compliance;
- Explicitly is based on the issuing Agency's determination that a violation has occurred;
- Requires specific corrective action, or specifies a desired result that may be accomplished however the recipient chooses, and specifies a timetable for completion;
- May impose requirements in addition to ones relating directly to correction (e.g., specific monitoring, planning or reporting requirements); and
- Contains requirements that are independently enforceable without having to prove original violation and subjects the person to adverse legal consequences for non-compliance.

4. A specific point at which a determination is made either that final physical compliance has been achieved, that the source is in compliance with a milestone in a prior order, or that escalation to a judicial enforcement action has been taken if such actions have not already been initiated.

   In developing program-specific guidance, this milestone may be treated more as a concept than as a fixed timetable. This is because often times the process is out of the control of the administering agency, e.g., the administrative hearing process or the State Attorney General's action. What is important, is the embodiment of the concept of timely follow-up and escalation, in requirements for tracking and management.

5. Final physical compliance date is firmly established and required of the facility. Although it is not possible for programs to establish any national timeframes, the concept of final physical compliance by a date certain should be embodied in EPA and State enforcement actions.

6. Expeditious physical compliance is required. It may not be possible for programs to define "expeditious" in terms of set time periods, but some concept of "expeditious" (i.e., that the schedule will result in a return to full physical compliance as quickly as can reasonably be expected) should be embodied in each program's guidance.

Timeframes established by the national programs for each of these minimum milestones are principally intended to serve as trigger points and not as absolute deadlines, unless specifically defined as such. Whatever timeframes are established are intended to apply only to federal requirements as adopted by the States, and do not apply to state statutes and requirements that go beyond those required by federal law. The timeframes are key milestones to be used to manage the program, to trigger review of progress in specific cases, and a presumption of where EPA may take direct enforcement action after consideration of all pertinent factors and consultation with the State.

Timeframes and their use in management will evolve over time as they will have to reflect different types of problems that may warrant different treatment. For example, programs will have to take into account such factors as new types of violations, the difference between operating and maintenance violations versus those that require installation of control equipment, emergency situations which may fall outside the scope of the normal timeframes for action, etc.

Administering agencies are expected to address the full range of violations in their enforcement responses considering the specific factors of the case and the need to maintain a credible enforcement presence. However, the new management approach setting forth desired timeframes for timely action could have resource implications beyond what is currently available to or appropriate for the full range of sources and violations. Therefore, as we begin to employ the concept of timely and appropriate enforcement response, at a minimum, the focus should be on the greatest problems, i.e., the significant non-compliers. Over time, and with more experience, this concept should be phased-in to cover a broader range of violations. This in no way should constrain the programs from applying the concepts broadly.

The choice of appropriate response is to be defined by each national program and applied by the administering agency based upon consideration of what is needed: (1) in general, to achieve expeditious correction of the violation, deterrence to future non-compliance and fairness; and (2) in individual circumstances, based upon the gravity of the violation, the circumstances surrounding the violation, the source's prior record of compliance and the economic benefits accrued from non-compliance. With three exceptions, the form of the enforcement response is not important by itself, as long as it achieves the desired compliance result. The exceptions generally fall into the following three categories:

1. If compliance has not been achieved within a certain timeframe, the enforcement response should meet minimum requirements, usually associated with at least the issuance of an administrative order (see criteria listed above) or judicial referral.

2. Because of the need to create a strong deterrence to non-compliance, it is important to assess penalties in certain cases, and only certain enforcement vehicles can provide penalties. Each program must clearly define, as appropriate, the circumstances under which nothing less than a penalty or equivalent sanction will be acceptable.

3. In some circumstances, a judicial action or sanction is usually the only acceptable enforcement tool. Each program must define these circumstances as appropriate. For example, a judicial action might be required where a compliance schedule for federal requirements goes beyond federal statutory deadlines.

A good program should have adequate legal authority to achieve the above objectives. Where deficiencies have been identified, steps should be taken to fill identified gaps.

CRITERION #6 Accurate Recordkeeping and Reporting

A quality program maintains accurate and up-to-date files and records on source performance and enforcement responses that are reviewable and accessible. All record-keeping and reporting should meet the requirements of the quality assurance management policy and procedures established by each national program consistent with the Agency's Monitoring Policy and Quality Assurance Management System. Reports from States to Regions, Regions to Headquarters must be timely, complete and accurate to support effective program evaluation and priority setting.

CRITERION #7 Sound Overall Program Management

A quality program should have an adequate level, mix and utilization of resources, qualified and trained staff, and adequate equipment. The intention here is not to focus on resource and training issues unless there is poor performance identified elsewhere in the program. In those instances, these measures can provide a basis for corrective action by the administering agency. There may be, however, some circumstances in which base level of trained staff and equipment can be defined by a national program where it will be utilized as an indicator of whether the program is adequate.

Similarly, a good compliance and enforcement program should have a clear scheme for how the operations of other related organizations, agencies and levels of government fit into the program. Again, this is a matter which would be given attention to the extent problems have been identified.

C. OVERSIGHT PROCEDURES AND PROTOCOLS

This section addresses how EPA should conduct its oversight function, its approach, process and follow-up, to build and improve individual programs and overall national performance.

1. Approach

The goal of oversight should be to improve the state (or Regional) compliance and enforcement program. To accomplish this, oversight should be tailored to fit State performance and capability. The context must be the whole state compliance and enforcement program, although EPA's focus for audit purposes will be on national priority areas.

No new oversight process is intended here. Existing procedures such as mid-year reviews, periodic audits and oversight inspections as established by each program and Region should be used. However, EPA oversight of state performance should be consistent with the following principles:

a. Positive oversight findings should be stressed as well as the negative ones.

b. Positive steps that can be taken to build the capability of state programs in problem areas should be emphasized. This should include providing technical assistance and training -- by EPA staff to the extent possible.

c. EPA action to correct problems should vary, depending on the environmental or public health effect of the problem and whether it reflects a single incident or a general problem with the state program.

d. Feedback between the States and EPA should be a two-way street. The States should be given an opportunity to comment on EPA's performance.

e. EPA should give States sufficient opportunity to correct identified problems, and take corrective action pursuant to the criteria for direct enforcement established in Section D.

f. EPA should use the oversight process as a means of transferring successful regional and state approaches from one Region or State to the other.

2. Process

Several actions can result in the most constructive review of the State's programs:

a. To the extent possible, files to be audited will be identified in advance, with some provision for random review of a percentage of other files if necessary.

b. Experienced personnel should be used to conduct the audit/review -- EPA staff should be used to the extent possible to build relationships and expertise.

c. There should be an exit interview and every opportunity should be made to discuss findings, comment on and identify corrective steps based upon a review draft of the written report.

d. Opportunity should be made for staffs interacting on enforcement cases and overseeing State performance to meet personally rather than rely solely upon formal communications -- this applies to both technical and legal staffs.

3. Follow-Up and Consequences of Oversight

When State performance meets or exceeds the criteria and measures for defining good program performance, EPA should, reward this performance in some of the following ways:

a. reduce the number, level or scope, and/or frequency of reviews or of some reporting requirements consistent with statutory or regulatory requirements;

b. reduce the frequency and number of oversight inspections; and

c. allow the program more flexibility in applying resources from an almost exclusive focus on national priorities e.g., major sources, to addressing more priorities of concern to the State e.g., minor sources.

When State performance fails to meet the criteria for good state performance, EPA may take some of the following actions, as appropriate:

a. suggest changes in State procedures;

b. suggest changes in the state's use of resources or training of staff;

c. provide technical assistance;

d. increase the number of oversight inspections and/or require submittal of information on remedial activities;

e. provide other workable state models and practices to States with problems in specific areas and match state staff with expertise in needed area;

f. if state enforcement action has not been timely and appropriate, EPA may take direct enforcement action;

g. grant awards could be conditioned by targeting additional resources to correct identified problems or reduced based on poor performance where such performance is not due to inadequate resources; and/or

h. consider de-delegation if there is continued poor performance.

D. CRITERIA FOR DIRECT FEDERAL ENFORCEMENT IN DELEGATED STATES

This section addresses criteria defining circumstances under which approved State programs might expect direct federal enforcement action and how EPA will carry out such actions so as to be most supportive of strengthening State programs.

1. When Might EPA Take Direct Enforcement Action?

A clear definition of roles and responsibilities is essential to an effective partnership. In delegated programs, primary responsibility for action resides with State or local governments with EPA taking action principally where a State is "unwilling or unable" to take "timely and appropriate" enforcement action. Many States view it as a failure of their program if EPA takes an enforcement action. This is not the approach or view adopted here. There are circumstances in which EPA may want to support the broad national interest in creating an effective deterrent to non-compliance beyond what a State may need to do to achieve compliance in an individual case or to support its own program.

Because States have primary responsibility and EPA clearly does not have the resources to take action on or to review in detail any and all violations, EPA will circumscribe its actions to the areas listed below and address other issues concerning State enforcement action in the context of its broader oversight responsibilities. Following are factors which EPA will consider in deciding whether to take direct action:

Type of Case

a. Violation of EPA order or consent decree

b. State requests EPA action

c. Cases specifically designated as nationally significant (e.g., significant non-compliers, explicit national or regional priorities)

d. Legal precedents

e. Interstate issues

f. Significant environmental or public health damage or risk involved

g. Significant economic benefit gained by violator

h. Repeat violators

i. Areas where State authority may be inadequate

Based on this general guidance, each program office may develop more specific guidance on the types of violations on which EPA should focus.

Timely and Appropriate Action by the State

The fact that a case may fit into one of the categories listed above does not mandate nor imply that EPA will take enforcement action. Several factors must be taken into account including the judgment of EPA staff, the availability of EPA resources, and a determination of whether the State has taken or can take timely and appropriate enforcement action as defined by national program guidance and State/Regional "agreements." These considerations are determining factors for cases falling within the following criteria: (c) national priorities; (e) interstate issues, (f) significant environmental damage or health effects; or (g) significant economic benefit. In the case of (h) repeat violators, Regions must assess whether the State response is likely to prove effective given the pattern of repeat violations and prior history of responses.

For types of violations based upon criteria: (a) violations of EPA order or consent decrees, or (d) legal precedent, EPA action need not be tied to whether a State has or is taking "timely and appropriate action." These are limited exceptions to the State-lead concept. In these circumstances, EPA should work with the State as early as possible in the case, well before completion of a State action which, if resulting in expeditious compliance by the facility, would render any subsequent EPA involvement unconstructive, ineffective or moot.

Regions also should identify, with their States, particular areas in which arrangements can or should be made, in advance, for direct EPA enforcement support where State authorities are inadequate -- (i) above -- or compliance has been a continuing problem.

Adequacy of Penalty

For types of violations identified in national program guidance as requiring a penalty or equivalent sanction, EPA generally will not consider taking direct enforcement action on the basis of the adequacy of the amount of penalty imposed unless clear national guidance has been defined, in consultation with States, and is being applied in practice in EPA Regions. EPA may, however, take direct enforcement action for recovery of additional penalties in instances in which a State penalty is determined to be grossly deficient e.g., de minimis, after considering all of the circumstances of the case and the national interest. In making this determination, EPA will give every consideration to the State's own penalty authority and any applicable State penalty policy.

In FY 1985, except for the limitation noted above, the Agency will focus on whether the State has imposed a penalty in appropriate cases and not on the amount of the penalty for the purposes of considering direct action unless guidance on penalty amounts applicable to States is in place. Where it is needed, each program will be developing more explicit guidance to both EPA Regions and States on penalty amounts to be applicable in FY 1986. State and Regional penalty assessments will, however, continue to be an area of review as EPA conducts audits and oversight of State programs.

2. How Should EPA Take Action So As To Better Support Strong State Programs?

Section E describes in some detail the principles and procedures for advance notification and consultation with States. These are imperatives for a sound working relationship. There are several other approaches identified here for how EPA can take enforcement action, where it is appropriate, in a manner which can better support States.

To the maximum extent possible, EPA should make arrangements with States to:

a. Take joint State/Federal action -- particularly where a State is responsibly moving to correct a violation but lacks the necessary authorities, resources or national or interstate perspective appropriate to the case;

b. Use State inspection or other data and witnesses, as appropriate;

c. Arrange for penalties (in part or in whole) to accrue to States -- to the extent it is legally possible to do so e.g., through joint action;

d. Involve States in creative settlements -- so that the credibility of States as the primary actor is perceived and realized;

e. Issue joint press releases and share credit with the State -- to ensure EPA is not in competition with the State and that EPA action is not erroneously perceived as a weakness or failure in the State's program; and

f. Keep States continually apprised of events and reasons for federal actions -- to avoid conflicting actions and to build a common understanding of goals and the State and federal perspectives.

3. How Do the Expectations for "Timely and Appropriate Action" Apply to EPA in Delegated States?

In delegated States, EPA performs an oversight function, standing ready to take direct federal enforcement action based upon the factors stated above. In its oversight capacity, in most cases EPA will not obtain real-time data. As indicated in Section F on State Reporting, EPA will receive quarterly reports and will supplement these with more frequent informal communications on the status of key cases. Therefore, we do not expect EPA Regions through their oversight to be able to take direct enforcement action following the exact same timeframes as those that apply to the administering agency. However, when EPA does determine it is appropriate to take direct federal action, EPA staff are expected to adhere to the same timeframes as applicable to the States starting with the assumption of responsibility for enforcement action.

E. ADVANCE NOTIFICATION AND CONSULTATION

A policy of "no surprises" must be the centerpiece of any effort to ensure the productive use of limited federal and state resources and an effective "partnership" in achieving compliance. This principle should be applied to all aspects of the compliance and enforcement program covering inspections, enforcement activities, press releases and public information, and management data summaries upon which State and national performance are assessed.[1]

In order to guarantee that there is ample advance notification and consultation between the proper state and federal officials, EPA Regions should confer annually with each State, discuss the following areas and devise agreements as appropriate. The agreements should be unique to each State and need not cover all areas -- so long as there is a clear understanding and discussion of how each area will be addressed.

1. Advance Notification to Affected States of Intended Inspections and Enforcement Actions

Agreements should identify:

- who should be notified, e.g.
  - -- the head of the program if it involves potential federal enforcement; and
  - -- who is notified of proposed/planned federal inspections.
- how the State will be notified, e.g.
  - -- the agencies share inspection lists; and
  - -- the agency contact receives a telephone call on a proposed federal enforcement case.
- when they will be notified -- at what point(s) in the process, e.g.
  - -- when a case is being considered; and/or
  - -- when a case is ready to be referred, or notice order issued.

In cases where other States or jurisdictions may be directly and materially affected by the violation, i.e., environmental or public health impacts, EPA's Regional Offices should attempt to notify all of the States that are interested parties or are affected by the enforcement action through the communication channels established by the State "agreements," working through the appropriate Regional Office. This notification process is particularly important for hazardous waste cases in which regulatees often operate across State boundaries.

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[1] Note that the Policy Framework does not apply to the criminal enforcement program.

Protocols for advance notification must be established with the understanding that each party will respect the other's need for confidentiality and discretion in regard to the information being shared, where it is appropriate. Continuing problems in this regard will be cause for exceptions to the basic principle of advance notification.

Many of our statutes or regulations already specify procedures for advance notification of the State. The State/Federal "agreements" are intended to supplement these minimum requirements.

2. Establishment of a Consultative Process

Advance notification is only an essential first step and should not be construed as the desired end result of these State/Federal "agreements." The processes established should be consultative and should be designed to achieve the following:

a. Inspections

Advance notice to States through sharing of lists of planned federal inspections should be designed so that state and federal agencies can properly coordinate the scheduling of site inspections and facilitate joint or multi-media inspections as appropriate. This should generally be done for all programs whether or not they are delegated, except for investigative inspections which would be jeopardized by this process.

b. Enforcement Actions

Federal and state officials must be able to keep one another current on the status of enforcement actions against non-complying facilities. Regularly scheduled meetings or conference calls at which active and proposed cases and inspections are discussed may achieve these purposes. At any point in the process, federal officials may defer to an appropriate state response.

3. Sharing Inspection Results

The Region and State should discuss the need for a process to share, as much as practicable, inspection results, monitoring reports, evidence, including testimony, where applicable for federal and/or state enforcement proceedings.

4. Dispute Resolution

The Region and State should agree in advance on a process for resolving disputes, especially differences in interpretation of regulations or program goals as they may affect resolution of individual instances of non-compliance.

5. Press Releases and Public Information

EPA has made commitments to account publicly for its compliance and enforcement programs. EPA also has made use of press releases as a means of enhancing the deterrence potential of its enforcement actions. While state philosophies on these matters may vary, the Region and State should discuss opportunities for joint press releases on enforcement actions and public accounting of both state and federal accomplishments in compliance and enforcement.

Discussions should address how and when this coordination would take place. To the extent possible, EPA generated press releases and public information reports should acknowledge and give credit to relevant state actions and accomplishments.

6. Publicly Reported Performance Data

Regions should discuss with States mechanisms for ensuring the accuracy of data used to generate monthly, quarterly and/or annual reports on the status of state and federal compliance and enforcement activities. Opportunities should be provided to verify the accuracy of the data with the States prior to transmittal to headquarters. Time constraints may be a real limitation on what can be accomplished, but it is important to establish appropriate checks and control points if we are to provide an accurate reflection of our mutual accomplishments. If there are no data accuracy concerns these mechanisms may not be needed.

F. STATE REPORTING

This section reviews key reporting and recordkeeping requirements for management data and public reporting on compliance and enforcement program accomplishments. It also addresses related reporting considerations such as reporting frequency and quality assurance.

1. Overview

A strong and well managed national compliance and enforcement program needs reliable performance information on which to judge success and identify areas needing management attention. The following outlines the reporting and recordkeeping framework for monitoring enforcement and compliance program performance that will form the basis of EPA's FY 1985 Strategic Planning and Management System component on enforcement. The information will be used by the Agency's chief executives to manage EPA operations, and to convey our combined federal and state performance record to others outside the Agency. This framework is limited in its application to information gathered for management purposes. It is not intended to apply to the environmental data and reporting on a source-by-source basis which is gathered routinely by the Agency from Regions and States under its source reporting programs and ongoing operations. The framework should serve as a stable guide to the national programs as they develop, in cooperation with the Regions and States, the measures and reporting requirements they will use to assess performance in implementing national compliance and enforcement programs.

In FY 1985 we will use five measures of compliance and enforcement performance for reporting purposes, identified in sequence below. The first two measure compliance results: (1) overall compliance rate for the regulated community; and (2) correction of the most significant violations. The Agency is working diligently to establish clear and reliable indicators for these two measures, recognizing the desirability of managing based as much as possible on results. While it is most desirable to find ways to ultimately examine the environmental benefits of compliance and enforcement actions, i.e., pollution levels reduced, this will not be accomplished in time for the FY 1985 planning and management cycle.

The two compliance results measures are supplemented with three measures of enforcement activity: (3) inspection levels as an indicator of the reliability of compliance data and as an indicator of field presence for deterrence purposes; (4) formal administrative enforcement actions undertaken; and (5) judicial referrals and filed court cases, the latter two measures of enforcement activities both serving as indicators of enforcement strength and the will to enforce.

In addition to these five reporting requirements, the Agency is introducing two new areas of recordkeeping requirements to support general management oversight of the national enforcement effort: (1) success in meeting new management milestones for defining timely and appropriate enforcement action; and (2) the level of penalties assessed and collected. For FY 1985 records should be maintained by States and Regions for review during the course of the year and to support an assessment at the end of the year on how well the agencies have done and how appropriate performance expectations might best be defined.

2. Reported Measures of Performance

Programs and Regions should ensure the first five measures of performance are required to be reported on a quarterly basis:

a. Compliance levels can be measured according to several different approaches. National program guidance should describe the approach each has selected as most appropriate given the characteristics of its program and regulated community. Each program should, at a minimum, report full physical compliance rates and also distinguish where relevant in reporting compliance levels between final "physical" compliance (compliance with emissions limits) and "paper" compliance (violation of emissions limits but following a compliance schedule).

b. Progress in Returning Significant Violations to Compliance: Each program in putting together its guidance should specifically define what it measures as significant violations. Lists of significant violators must be compiled by Region and State. The Agency has two indicators of performance in this area: one is a static measure of progress against a beginning-of-year backlog of significant violators not yet brought into compliance. The second is a dynamic balance sheet which adds to the beginning-of-year inventory any new significant violators as they are found and keeps a running tally of those for which a formal enforcement action was taken, those which were brought into compliance, or those which remain, pending enforcement action. Each program should provide for reporting against both measures.

Each program should also anticipate being required to set quarterly targets for reduction of its beginning-of-year backlog of significant violators. Targets will be set for States and Regions on the basis of either returning the violator to compliance or taking a formal enforcement action which will lead to expeditious physical (full) compliance. Reporting of progress against significant violations will be set on the basis of these same two categories of response. In developing its guidance, each program should specify the types of enforcement actions which qualify as having taken "a formal enforcement action."

c. Inspections are conducted for many purposes, including confirmation of compliance levels. Reporting on inspections has been a long standing practice. Regions and States should be asked to provide specific quarterly commitments and reporting on the number of inspections to be conducted. Where programs have broken down inspection reporting into different classes to reflect the different purposes, for example, sampling inspections, "walk-through," or records check inspections, this reporting is expected to continue. Each program, as it draws up its guidance, should be as clear and specific as possible in defining the different categories of inspection activity to be reported.

d. Formal administrative enforcement actions will be reported as the critical indicator of the level of administrative enforcement activity being carried on by environmental enforcement agencies. It is not our intention to provide a comprehensive reporting of all actions, both informal and formal, being taken to secure compliance. At the same time, it is recognized that there are many different informal techniques used which succeed in getting sources to return to compliance. What is sought here is a telling indicator which will keep reporting as clear cut and unburdensome as possible.

   In preparing its guidance each program should list the specific actions to be included under this reporting area. Each program should be guided by the characteristics of a formal administrative action set forth in Section B on "Timely and Appropriate Enforcement Action." For programs without formal administrative authority, such as Drinking Water, other surrogate measures should be defined.

e. Judicial Actions is an area where there has been a long standing practice of federal reporting with no corresponding State data. Commensurate with current reporting practices within EPA, the number of State civil referrals and filed cases will now be reported. We will also now include criminal judicial actions. These should be reported as a separate class and be counted only after they are filed in court in recognition of their sensitive nature.

3. Recordkeeping for Performance Measurement

There are two performance areas for which States and Regions will be asked to retain accessible records and summary data: (1) timeliness and appropriateness of response to violations; and (2) penalties. These categories of information will be considered for future development as measures for possible inclusion in the Agency's management and reporting systems.

a. Timeliness and appropriateness of state and federal response to violations is the principal subject of new guidance being developed by each program. Each program will report to the Steering Committee on how it will evaluate performance in this area during this developmental year including a listing of the information and its source(s) it will rely on to assess timeliness and appropriateness of actions on an ongoing basis. At the end of a year's experience with implementing these oversight agreements, and in preparing for the FY 1986 operating year, each program will conduct a review to determine whether there are measures which might be useful for management purposes. At that time, each program should consider developing a measure for routine reporting, if appropriate.

b. Penalty programs are essential to the effective working of an environmental enforcement program. Records need to be kept of the number and amount of penalties issued by state and federal program offices regularly assessing penalties both those assessed and collected. These records and summary data should be available for review at the time of annual program audits and, in the event of information requests by external groups, on the extent of penalties assessed at any point in time. Each program office in preparing its guidance should specifically address the need for recordkeeping on penalties.

4. Reporting Considerations

There are two areas for special consideration by the programs as they put together their guidance on reporting requirements:

a. Quality Assurance and quality control of reported data is essential as these are the critical indicators of program performance which will be used in making program management decisions of priority, resource levels, and direction. This information must be as reliable as possible. Quality assurance and quality control of data encompases three types of activities including: (1) setting up initial reporting procedures; (2) building in information review and confirmation loops; and (3) conducting routine audits and reviews of reports and reporting systems. Each program in preparing its guidance should describe the safeguards it uses in its reporting, review and confirmation procedures, and describe the audit protocols it will use to ensure the reliability of enforcement and compliance data.

b. The frequency of reporting in order to be most useful for management purposes, at a minimum, should be done on a quarterly basis -- for some programs monthly reporting may be necessary on an interim basis due either to their newness or their importance. This reporting frequency is designed for oversight purposes. It is not designed to provide for "real time" information, that is, instant access to information on the status of a case. However, it is anticipated that formal reporting will be supplemented with more frequent informal communications between the Regions and States on the progress of key cases of concern.

APPENDIX

A SUMMARY INDEX OF NATIONAL PROGRAM GUIDANCE APPLICABLE TO STATE/FEDERAL ENFORCEMENT "AGREEMENTS"

A. State/Federal Enforcement "Agreements": Form, Scope and Substance

Introduction: Regions and States are not expected to duplicate national program guidance. Written "agreements" resulting from discussions between Regions and States should cover topics not clearly specified elsewhere. If not otherwise specified, the Agency-wide Policy Framework will apply. This Framework should be used for establishing the tenor in working with the States and for filling in identified gaps in the national program guidance. The form of the agreement is up to the Regions unless specified by national program guidance. The Regions should decide if there will be a Region-wide "agreement" or whether each Division will separately develop the "Agreements", and what form they will take.

	WATER - NPDES	DW-PWS	AIR	RCRA	FIFRA
Primary Documents:	New Guidance	New Guidance	New Guidance	RCRA Implementation Plan	Grant Guidance
FORM:	Regions have total flexibility to determine the form of the "Agreements", except the items identified below are required to be included in the grant negotiations:				
1. Oversight Criteria and Measures				X	X
2. Oversight Procedures and Protocols					X
3. Criteria for Direct EPA Enforcement					X
4. Procedures for Advance Notification and Consultation					X
5. Reporting Requirements		X		X	X

B. Oversight Criteria and Measures: Defining Good Performance

Introduction: Regions should make sure that States have copies of program oversight criteria and measures and that the States and Regions agree upon the "timely and appropriate" definitions and expectations. In particular, States should be made familiar with the new milestones for timely enforcement action and the situations where penalties are important. Regions should address specific areas of concern that are unique to the States, including areas targeted for improvement.

	WATER-NPDES	DW-PWS	AIR	RCRA	FIFRA
Primary Documents:	1. New Guidance	1. Grant Guidance 2. Regs 3. Reporting Systems 4. New Guidance	1. National Air Audit System 2. New Guidance	1. National Criteria for Program Quality 2. RCRA Implementation Plan 3. RCRA Enforcement Response Guidance	1. Grant Guidance 2. Primacy Regs
General Oversight Criteria:					
1. Clear identification of the regulated community	1	1 & 4	1	1	N/A
2. Clear and enforceable requirements	1	2 & 4	1	1	N/A
3. Accurate and reliable compliance monitoring	1	2 & 4	1	1	1
4. High & improving rates of continuing compliance	1	3 & 4	1	1&2	1
5. Timely and appropriate enforcement response	1	4	2	1,2&3	2
6. Accurate recordkeeping and reporting	1	1 & 4	1	2	1
7. Overall Program Management	1	1 & 4	1	1	1

C. Oversight Procedures and Protocols

Introduction: Regions have maximum flexibility to fashion arrangements with the States that are most conducive to a constructive relationship. Regions should follow program specific guidance, where available, using the Agency-Wide Policy Framework to fill gaps where appropriate.

Primary Documents:	WATER-NPDES	DW-PWS	AIR	RCRA	FIFRA
1. Approach & Process	New Guidance	New Guidance*	Air Audit System*	RCRA Implementation Plan	Grant Guidance
2. Consequences of Oversight	New Guidance	New Guidance*	*	National* Criteria for Quality Program and Enforcement Response Policy	Grant Guidance

*Agency-wide Policy Framework also applies

D. Criteria for Direct Federal Enforcement in Delegated States

Introduction: In negotiations with the States, the Regions must clearly define circumstances under which EPA may take direct enforcement action. In general, the Agency-wide Policy Framework should be used to identify the factors to be considered. The program guidance should be followed for determining when to take direct Federal enforcement action based on lack of "timely and appropriate" action, including what classes of violations merit penalties. The Regions should discuss with the States how to take these actions in ways that are supportive of a State action using the Agency-wide Policy Framework as a guide.

Primary Documents:	WATER	DW-PWS	AIR	RCRA	FIFRA
1. Factors for Consideration of Direct Action (excluding "timely and appropriate" and penalties)	New Guidance*	New Guidance*	*	RCRA Enforcement Response Guidance*	Primacy Regs*†
2. Timely and Appropriate Factor	New Guidance	New Guidance	New Guidance	RCRA Enforcement Response Guidance and National Criteria for a Quality Program	Primacy Regs
3. Penalties Factors on where appropriate	To be developed during FY 85	To be developed during FY 85	New Guidance	RCRA Enforcement Response Guidance and RCRA Penalty Policy	Primacy Regs

* Agency-wide Policy Framework also Applies

E. Advance Notification and Consultation

Introduction: Regions should develop agreements with the States based on a policy of "no surprises". In general, Regions should use the Agency-wide Policy Framework for developing this portion of the agreement, supplemented by program-specific guidance where provided (see below).

Primary Documents:	WATER-NPDES	DW-PWS	AIR	RCRA	FIFRA
1. Advance Notification	New Guidance*	*	National Air Audit System*	*	N/A
2. Consultative Process: Inspections Enforcement Actions	New Guidance*	*	New Guidance*	*	*
3. Dispute Resolution	*	*	*	*	N/A
4. Press Releases	*	*	*	*	N/A
5. Publicly Reported Performance Data	New Guidance*	*	CDS Guidance Memo*	*	Grant Guidance

*Agency-wide Policy Framework also applies

F. State Reporting

Introduction: Regions should work with the States to ensure timely reporting of State data, and resolve definitional and quality control problems. Regions should reach agreement with State as to how certain State enforcement actions will be reported, following program guidance.

	WATER-NPDES	DW-PWS	AIR	RCRA	FIFRA
5 Reporting Items: 1. Report on Compliance Levels	Guidance for all State Reporting Requirements Found in "SPMS - FY 1985 Goals, Objectives, Commitments and Measures	See DW Annual Reporting Requirements memo for all items	Guidance for all State Reporting Requirements Found in "SPMS - FY 1985 Goals, Objectives, Commitments and Measures"	See RCRA Implementation Plan for all Reporting Items	N/A
2. Targets for SNC lists -reports & commitments					SPMS Guidance
3. Report on number of "formal enforcement actions"					Grant Guidance
4. Inspections - reports & commitments					Grant Guidance
5. Report on number of referrals & cases filed					Grant Guidance
2 Recordkeeping Items: 1. Evaluate timely and Appropriate action	QNCR System		To be added to the National Air Audit System	Monthly Compliance and Enforcement Log	Grant Guidance
2. Records on penalties	*		*	* *	Grant Guidance
Definitions: 1. Formal administrative enforcement actions	New Guidance*		*	RCRA Compliance & Enforcement Strategies Memo	Determined by State Law
2. Inspections	None		National Air Audit System	RCRA Implementation Plan	Grant Guidance
3. Significant Noncompliers (SNC)	Proposed Regulation		SPMS Guidance	RCRA Implementation Plan	SPMS Guidance

* Agency-Wide Policy Framework also applies

Identification of Documents Cited in Appendix

Crosscutting:"SPMS FY 1985 Goals, Objectives, and Measures" to be issued by June 30, by OMSE.

Water - NPDES

o New Guidance - "Guidance for Regional Oversight of NPDES State Programs." Memo from Jack Ravan to be issued by June 30, 1984.

o QNCR System - Quarterly Non-compliance Report, which each State/Region submits regarding permit non-compliance with permit conditions by major dischargers

o Proposed Regulation-Definition of instances of non-compliance reported in QNCR contained in proposed regulation cleared by OMB 6/22/84, will be transmitted to Regions with New Guidance.

Drinking Water

o New Guidance - "National Guidance for Oversight of State Enforcement of the Public Water System Supervision Program" Memo from Vic Kimm to be issued by June 30, 1984.

o Grant Guidance - "Final Guidance on PWS Grant Program Implementation" Memo from Vic Kimm on March 20, 1984.

o Regs - NIPDWR, 40 CFR Part 141 and 142.

o Reporting Systems - SPMS and FRDS

o DW annual Reporting Requirements - "FY 1985 Reporting Requirement" memo from Vic Kimm to be issued in final by June 30, 1984.

Air

o New Guidance - "Guidance on Timely and Appropriate" EPA/State Enforcement Response for Significant Violators" Memo from Joe Cannon to be issued June 30, 1984.

o National Air Audit - "National Air Audit System Guidelines for FY 84", November 1983.

o CDS Guidance Memo - Memo from John Rasnic to Air Branch Chiefs dated April 10, 1984 with April 25, 1984 supplement.

RCRA

o "National Criteria for a Quality Program" - dated May 15, 1984.

o "RCRA Penalty Policy" - dated May 8, 1984.

o "RCRA Implementation Plan," to be issued by June 30, 1984.

o "RCRA Enforcement Response Guidance" to be issued by June 30, 1984.

o RCRA Compliance and Enforcement Strategies Memo - "Compliance Enforcement Program Descriptions in Final Authorization Application and State Enforcement Strategies," memo from Lee Thomas to RA's dated June 12, 1984.

o Compliance Monitoring and Enforcement Log - the form for recording the monthly compliance data from the States and Regions.

FIFRA

o Grant Guidance - "Final FY 85 Enforcement and Ceritification Grant Guidance," Memo from Gus Conroy, date March 14, 1984

o Primacy Regs - "FIFRA, State Primary Enforcement Responsibilities," 40 CFR Part 173, January 5, 1983.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

SEP 17 1984

OFFICE OF
THE ADMINISTRATOR

Honorable Elliott H. Levitas
U.S. House of Representatives
Washington, D.C. 20510

Dear Mr. Levitas:

On August 9, 1984, I sent you data on EPA's enforcement history since 1978. Since sending you that data, it has come to my attention that the data is in error. I have attached the revised data which, while indicating very small changes in FY 1983 and FY 1984, indicates a very substantial difference in enforcement activity in FY 1978.

As I understand it, due to a computer retrieval error, the original 1978 data which I provided covered only 9 months of FY 1978 i.e. January 1, 1978 through September 30, 1978. In fact, the number of enforcement actions for all of FY 1978 was 319, not the 260 that I reported. Therefore my statement that FY 1984 could be the biggest year in EPA history would not be correct. I regret the fact that I inadvertently misinformed you.

Sincerely,

Alvin L. Alm

Alvin L. Alm
Deputy Administrator

Enclosure

*HISTORY OF CIVIL REFERRALS
(RGN's TO HQ OR DOJ)

Year	Total Including Mobile	Mobile Cases	Total Excluding Mobile
78	319	60	259
79	236	37	199
80	268	27	241
81	93	5	88
82	168	2	166
83	160	6	154

FY84 AS OF 6/30/84

Civil Cases	163
Mobile Cases	7
Criminal Cases	29
	199

*Cases based on DOCKET printout of the number of cases (not number of facilities covered by these cases) referred to headquarters or direct to DOJ from the Regions.

(Referral numbers revised as of 9/11/84 DOCKET retrieval)

FY84 YEAR TO DATE EPA ENFORCEMENT ACTIVITY

CIVIL REFERRALS**

	I	II*	III	YTD
AIR	14	16	18	48
WATER	5	34	29	68
PESTICIDES	0	0	1	1
TOXICS	1	2	4	7
RCRA	2	10	2	14
SUPERFUND	1	12	12	25
MOBILE	2	3	2	7
	25	77	68	170

*ADJUSTED DOWNWARD TO FACTOR OUT RE-REFERRALS AND FACILITY BASIS COUNTING.

**DATA AS OF 9/11/84 COMPUTER DOCKET RETRIEVAL

FY84 EPA

CRIMINAL REFERRALS TO HEADQUARTERS

I	II	III	YTD
8	8	13	29

Table of Contents

Report Number	Report Contents
1	All civil cases referred to EPA-HQ and direct referrals from EPA-Regions to DOJ in FY84 through 6/30/84. Report is broken down by fiscal quarter and by Headquarters Division.
2	Same information as Report #1 above except that the quarterly information for FY84 is broken down by EPA-Region.
3	All civil cases referred to DOJ in FY84 through 6/30/84, including cases referred directly to DOJ by EPA-Regions. Report is broken down by fiscal quarter and by Headquarters Division.
4	Same information as Report #3 above except that the quarterly information for FY84 is broken down by EPA-Region.
5	All civil cases referred to EPA-HQ and direct referrals to DOJ by EPA-Regions for each fiscal year since FY78 through 6/30/84. The report is broken down by fiscal year and Headquarters Division.
6A,6B	Same information as Report #5 above except that the information for each fiscal year is broken down by EPA-Region.
7	All civil cases referred to DOJ by EPA-HQ and direct referrals by EPA-Regions for each fiscal year since FY78 through 6/30/84. The report is broken down by fiscal year and Headquarters Division.
8A,8B	Same information as Report #7 above except that the information for each fiscal year is broken down by EPA-Region.

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Report Number	Report Contents
9	All civil cases filed in court for each fiscal year since FY78 through 6/30/84. The report is broken down by fiscal year and by Headquarters Division.
10A,10B	Same information as Report #9 above except that the information for each fiscal year is broken down by EPA-Region.

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                          CONSOLIDATED DOCKET RETRIEVAL SYSTEM
                                    CROSSTAB REPORT
   08/23/84                                                                 PAGE 001

                             ALL CASES REFERRED TO HQ IN FY84 TO 6/30/84
                             CROSSTAB BY FQ AND MODV.  FOR ROBIN WOOD.

                            MODV        MODV        MODV        MODV        MODV        MODV
EVENT-DATE                  AIR         HAZ         MOB         PES         WAT         TOTL


1                             14           3           2           1           5          25

2                             16          22           3           2          34          77

3                             18          14           2           5          29          68

T O T A L                     48          39           7           8          68         170

NUMBER OF VALUES OF DRFQ IS    3
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                              CONSOLIDATED DOCKET RETRIEVAL SYSTEM
                                        CROSSTAB REPORT
                                                                                         PAGE 001
    08/23/84
                                ALL CASES REFERRED TO HQ IN FY84 TO 6/30/84
                                CROSSTAB BY FQ AND REGION.  FOR ROBIN WOOD.

                           REGN   REGN   REGN   REGN   REGN   REGN   REGN   REGN   REGN   REGN   REGN
EVENT-DATE                 01     02     03     04     05     06     07     08     09     10     TOTL


1                             1      3      5      2      3      5      2      3      0      1     25

2                             7      3      8      7     25      9      4      5      5      4     77

3                             4      7      6      8     18      5      8      6      2      4     68

T O T A L                    12     13     19     17     46     19     14     14      7      9    170

NUMBER OF VALUES OF DRFQ IS   3
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                                   CONSOLIDATED DOCKET RETRIEVAL SYSTEM
                                             CROSSTAB REPORT
                                                                                     PAGE 001
    08/23/84

                                      ALL CASES REFERRED TO DOJ IN FY84 TO 6/30/84
                                      CROSSTAB BY FQ AND HQDV.  FOR ROBIN WOOD.

                                                                                       HQDV
                                                                        HQDV           TOTL
                       HQDV          HQDV          HQDV          HQDV          WAT
EVENT-DATE             AIR           HAZ           MOB           PES


1                       17            11             2             4            15       49

2                       13             8             3             2            14       40

3                       20            21             0             3            34       78

T O T A L               50            40             5             9            63      167

NUMBER OF VALUES OF DDFU IS    3
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                              CONSOLIDATED DOCKET RETRIEVAL SYSTEM
                                         CROSSTAB REPORT
    08/24/84                                                                                PAGE 001

                                ALL CASES REFERRED TO DOJ IN FY84 TO 6/30/84
                                CROSSTAB BY FO AND REGION.  FOR ROBIN WOOD.

                           REGN   REGN   REGN   REGN   REGN   REGN   REGN   REGN   REGN   REGN   REGN
EVENT-DATE                 01     02     03     04     05     06     07     08     09     10     TOTL


1                             1      7      4      5     16      9      1      2      1      3     49

2                             5      2      8      1      4      6      6      3      2      3     40

3                             3      7      5     10     29      7      2      6      4      5     78

T O T A L                     9     16     17     16     49     22      9     11      7     11    167

NUMBER OF VALUES OF DDFO IS   3
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                              CONSOLIDATED DOCKET RETRIEVAL SYSTEM                              REPORT #5
                                          CROSSTAB REPORT
     09/11/84
                                  ALL CASES TO HQ FOR EACH FY
                                  CROSSTAB BY FY AND HQDV. INCL DRIN TO DOJ.

                              HQDV          HQDV          HQDV          HQDV          HQDV          HQDV
EVENT=DATE                    AIR           HAZ           MOB           PES           WAT           TOTL


78                             95             3            60             0           161           319

79                            100            11            37             3            85           236

80                            106            68            27             0            67           268

81                             40            13             5             2            33            93

82                             56            48             2             2            60           168

83                             45            41             6            13            55           160

84   AS OF 06/30/84            48            39             7             8            68           170

T O T A L                     490           223           144            28           529          1414

NUMBER OF VALUES OF DHFY IS     7
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CONSOLIDATED DOCKET RETRIEVAL SYSTEM
CROSSTAB REPORT

09/11/84

REPORT #4A
~~PAGE 001~~

ALL CASES TO HQ FOR EACH FY
CROSSTAB BY FY AND ~~MODY~~ REGN, INCL DRIN TO DOJ.

EVENT-DATE	REGN 01	REGN 02	REGN 03	REGN 04	REGN 05	REGN 06	REGN 07	REGN 08	REGN 09	REGN 10	REGN TOTL
78	4	25	46	39	78	18	4	15	13	17	259
79	2	23	26	23	83	15	9	12	3	3	199
80	9	13	36	43	75	24	12	5	16	9	242
81	2	10	14	12	17	16	13	1	1	6	92
82	6	19	30	13	40	21	8	10	8	13	168
83	10	21	21	16	42	19	8	5	8	10	160
84 AS OF 06/30/84	12	13	18	17	46	19	14	14	7	10	170
TOTAL	45	124	191	163	381	132	68	62	56	68	1290

NUMBER OF VALUES OF OHFY IS 7

+ HQ 124 (See Rpt 6B)
1414

Report # 6B
~~[illegible]~~

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                              CONSOLIDATED DOCKET RETRIEVAL SYSTEM
                                           CROSSTAB REPORT
     09/12/84
                                        ALL CASES TO HQ FOR EACH FY
                                        CROSSTAB BY FY AND HQDV. INCL DRIN TO DOJ.

                         REGN            REGN
EVENT-DATE               HQ              TOTL


78                         60              60

79                         37              37

80                         26              26

81                          1               1

82                          0               0

83                          0               0

84  As of 06/30/84          0               0

T O T A L                 124             124

NUMBER OF VALUES OF DHFY IS 7
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Report # 7

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                                  CONSOLIDATED DOCKET RETRIEVAL SYSTEM
     09/11/84                              CROSSTAB REPORT

                                    ALL CASES TO DOJ FOR EACH FY
                                    CROSSTAB BY FY AND HQDV, INCL DRIN TO DOJ,

                           HQDV         HQDV         HQDV         HQDV         HQDV         HQDV
 EVENT=DATE                AIR          HAZ          MOB          PES          WAT          TOTL


 78                         68            2           55            0          138           263
 79                        103            9           46            3           81           242
 80                         77           52           20            0           55           204
 81                         51           14           14            1           36           116
 82                         31           28            4            2           46           111
 83                         61           30            9            7           56           163
 84   AS OF 06/30/84        50           40            5            9           63           167
 T O T A L                 441          175          153           22          475          1266
 NUMBER OF VALUES OF DDFY IS 7
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09/11/84

CONSOLIDATED DOCKET RETRIEVAL SYSTEM
CROSSTAB REPORT

REPORT # 8A
~~[illegible]~~

ALL CASES TO DOJ FOR EACH FY
CROSSTAB BY FY AND REGN, INCL DRIN TO DOJ.

EVENT=DATE	REGN 01	REGN 02	REGN 03	REGN 04	REGN 05	REGN 06	REGN 07	REGN 08	REGN 09	REGN 10	REGN TOTL
78	2	19	34	32	64	15	4	12	9	17	208
79	4	27	27	21	83	11	6	10	4	3	196
80	9	13	20	35	53	21	11	7	10	6	185
81	2	9	20	10	31	8	13	0	5	4	102
82	3	7	23	11	19	22	6	4	6	10	111
83	12	25	23	16	36	16	6	11	6	12	163
84 AS OF 06/30/84	9	16	17	16	49	22	9	11	7	11	167
T O T A L	41	116	164	141	335	115	55	55	47	63	1132

NUMBER OF VALUES OF DDFY IS 7

+ HQ 134 (See Rpt 8B)
1266

OFFICE OF WATER ENFORCEMENT AND PERMITS

Resource Summary *
FY 1984 - FY 1985

	FY 84*	FY 85*
PERMIT ISSUANCE		
Regions		
FTE	253.4	292.5
Total Dollars ($000)	8,703.5	10,789.4
Intra ($000)	8,452.4	10,538.3
Extra ($000)	251.1	251.1
Headquarters		
FTE	47.4	48.4
Total Dollars ($000)	6083.5	5951.4
Intra ($000)	2048.3	2120.5
Extra ($000)	4035.2	3830.9
WATER QUALITY ENFORCEMENT		
Regions		
FTE	325.7	353.7
Total Dollars	11,562.3	12,780.7
Intra ($000)	11,516.3	12,740.2
Extra ($000)	46.0	40.5
Headquarters		
FTE	27.1	32.1
Total Dollars	1816.3	3,271.4
Intra ($000)	1657.7	2,010.8
Extra ($000)	158.6	1,260.6

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* as of September 11, 1984

WATER ENFORCEMENT ACTIONS REPORT
SUMMARY

	Administrative Orders						Notices of Violations to States					Referrals
	MUNI. MAJORS	MUNI. MINORS	NON MUNI. MAJORS	NON MUNI. MINORS	MISC.	TOTAL AOs	MUNI. MAJORS	MUNI. MINORS	NON MUNI. MAJORS	NON MUNI. MINORS	TOTAL NOVs	
FY75						738						
FY76						915					139	
FY77						1128					297	
FY78						730					203	138
FY79						506					147	81
FY80						596					89	55
FY81	235	49	124	125	29	562	41	4	18	6	69	36
FY82	105	48	78	81	17	329	39	3	26	4	72	46
FY83	306	143	106	224	2	781	34	3	11	2	50	56
FY84 THRU 9/14/84	567	96	113	644	99	1519	43	2	22	2	69	63

* Only documents received by the Water Enforcement Division (EN-338) are represented in the above figures. Revised 9/14/84.

** All civil water cases referred to DOJ by EPA-HQ and direct referrals by EPA Regions. Data from OECM. Pull date 9/11/84.

ISC. includes Section 404 violations and AO's written on Federal and unpermitted cilities.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OFFICE OF
WATER

SEP 5 1984

MEMORANDUM

SUBJECT: Permit Quality Review Program

Rebecca

FROM: Rebecca Hanmer, Director
Office of Water Enforcement and Permits

TO: Jack E. Ravan
Assistant Administrator for Water

During FY '84, the Permits Division has developed and conducted a pilot permit quality review (PQR) program in the Regional offices. The program promises to be very useful in EPA's performance of oversight responsibilities for all State and Regional permit issuance programs. The Agency's Operating Guidance for FY '85-'86 reflects our commitment to implement this program and extend it to approved NPDES States in FY '85. The purpose of this memorandum is to provide you with information about the PQR program and to offer my recommendations about the direction that the program should take in FY '85 and '86. If you concur, we will begin to implement the program as described at the beginning of FY '85.

Background

In September 1983, the Permits Division developed a plan for conducting the reviews. A contractor was retained to develop a detailed plan for the reviews. The contractor report was produced in November and provided for selection and review of certain EPA-issued industrial major permits using standard checklists. The checklists covered five aspects of NPDES permits:

- o Procedural requirements;
- o Permit conditions (chiefly boilerplate);
- o Effluent limitations;
- o Monitoring provisions; and
- o Compliance schedules.

The proposed plan and the checklists were presented to the Regional Water Management Division managers (primarily Permits Branch Chiefs) at a national NPDES meeting in Pensacola, Florida in December 1983.

Based on Regional comment, the plan and the checklists were revised. A permit quality review team was established, led by project manager Tom Laverty of the Permits Division and consisting of Permits Division, Effluent Guidelines Division, and Regional permits personnel. The team then conducted two preliminary pilot studies. The first was a one-day review conducted in Region III in February 1984. The second was a week-long review in Region VIII in early March. The Denver study was intended as a full-scale test of the review procedures and checklists. As a result of these two preliminary reviews, the team refined its checklists and procedures.

Permit Quality Reviews

The PQR team conducted three week-long reviews: in Dallas in April 1984, and in Atlanta and Boston in May. Each review opened with an introductory discussion between the team and the Regional program managers about the organization of the Region's permitting program and the review procedures. Over the next three days the team then would review between 20 and 25 major industrial permits that the Region had issued during the previous two years. The team then met with the Regional managers to discuss its findings. The discussion covered both favorable observations and the team's recommendations on ways to improve the permitting effort. Written summaries were provided later on the general findings of the team. (Specific permits reviewed were not discussed by name in these summaries.)

Results of the Reviews

The vast majority of the permits reviewed were properly developed and technically sound. The permit conditions reflected most, if not all, of the current regulatory requirements. The administrative records were generally complete. In addition, the monitoring requirements and, where used, compliance schedules appeared to be appropriate generally.

The team identified several areas in which each of the Regions reviewed could make improvements. Among the areas for improvement were:

- o Determination of appropriate production levels to be used in developing production based limits;
- o Need for more extensive use of biomonitoring to evaluate toxicity;
- o Thoroughness of the discussions in the fact sheet relating to such subjects as the water quality impacts of the discharge; and
- o Completeness of the administrative record.

In addition, the team identified materials in use in each Region that could be helpful if distributed to the other Regions and NPDES States. These include checklists, guidance documents, and special permit conditions. (Those materials are included in Attachment A.)

Recommendations

The PQR program has produced several worthwhile results.

These include:

- o Better quality permits and corresponding improvements in environmental quality as the PQR team's recommendations are adopted by the Regions;
- o Better understanding by OWEP managers and staff of the Regional permitting programs and of the standards by which they should be judged;
- o Direct exposure of personnel from the Permits and Effluent Guidelines Divisions to the day-to-day workings of the Regional permit programs;
- o Exchange of ideas and materials between Regions because of participation in the reviews by Regional permit writers; and
- o Creation of a mechanism for fair and consistent oversight of the permitting programs that provides program managers with feedback on areas of strength and concern.

We were able to achieve these results only because of the support and participation of the Effluent Guidelines Division and because of the cooperation and assistance that we received from the Regional managers and staff. The Regional Water Management Division Directors were very supportive of this effort both before and during the pilot reviews. (See Attachment B.)

I recommend that we now institutionalize the PQR as a routine exercise and that:

1. Regions conduct regular permit quality reviews of selected State-issued NPDES permits;
2. OWEP continue to conduct permit quality reviews of selected EPA-issued permits each year; and
3. OWEP extend the reviews in FY '85 to cover municipal permits, including local pretreatment program approvals.

Recommendation 1. I recommend that the highest priority be given to developing a national program of permit quality reviews for State-issued permits. Although the Regions conduct reviews of many of the major permits issued by the States, these reviews are done on a case-by-case basis. Conducting permit quality reviews of the State-issued permits would provide us with a systematic overview of these permits. The PQR procedures and checklists developed this year for EPA-issued permits could be adapted for use in connection with Regional oversight of State activities. We would like to begin working with the Regions right away in this effort.

Recommendation 2. Reviews of EPA-issued permits should be conducted each year, probably in three to four Regions per year, depending on permit issuance rates and workload. A review cycle could be established to insure that permits in each Region with permit issuance responsibilities are reviewed at least once during a two or three-year cycle.

Recommendation 3. The procedure developed for review of industrial permits could be modified slightly for reviews of municipal permits. A series of appropriate checklists also could be developed for the reviews. Review of municipal permits also is appropriate at this time to assess the quality of pretreatment programs and any related conditions. We can use our experience in reviewing California pretreatment programs to develop a method for this part of the reviews.

Please let me know if you would like a briefing on my recommendations or on any aspect of the PQR program.

Attachments

cc: Ed Johnson (OWRS)
Jeff Denit (EGD)

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

MAY 2 - 1984

OFFICE OF
WATER

MEMORANDUM

SUBJECT: Permit Quality Review in Region VI

TO: Martha Prothro, Director
Permits Division (EN-336)

FROM: Tom Laverty, Project Manager
Permit Quality Review

Tom

THRU: Bill Jordan, Chief
NPDES Technical Support Branch
Permits Division

Bill

The Permit Quality Review (PQR) team conducted a review of 25 major industrial permits during the week of April 2. The permits were issued by Region VI in 1982 and 1983. The team consisted of Steve Bugbee, Roosevelt Childress (IV), Bob Dellinger, Gary Hudiburgh, and me. The team reviewed a set of permits that was generally well conceived and effectively developed, although there were some exceptions. During our closing meeting with Myron Knudson on April 6, we discussed both the favorable aspects and the deficiencies in that set, and made several recommendations for improving the quality of the permits. Each of the topics that we reviewed with him is discussed below. In addition, we went over specific problems that we considered minor in nature with Bob Hannesschlager and his staff.

Overall Quality of the Permits

The overall quality of the permits generally was very good. The boilerplate was current and included several useful additions. One of these was a biomonitoring provision that will be increasingly useful as water quality permitting grows in importance. The fact sheets and rationales were usually clear and thorough, especially those developed by Ed McHam. The monitoring and reporting provisions were complete and appropriate. The responses to public comments were usually complete and responsive, with two exceptions that are discussed in the next section.

In cases in which promulgated guidelines were available to the permit writers, they applied them properly. In situations in which guidelines were not promulgated until after issuance of the permit, the BPJ limitations were usually more stringent than the limitations in the promulgated guideline.

Deficiencies

While the overall quality of the permits was very good, the review team discovered several deficiencies, which fell into four categories. Those categories were:

- Omission of materials from the file;
- Failure to take State comments on the draft permit into account in developing the final permit;
- Use of design production figures rather than actual production figures in calculating limitations; and
- Failure to establish limitations for one outfall for contaminated stormwater.

Two types of material were omitted from the permit files. One type was effluent data, while the other was enforcement information. In one case, the file did not contain Form 2C, although the file contained several references to the data. In another case, some data required for Item V-A of Form 2C were not in the file.

The omitted enforcement information was administrative orders (or consent decrees) that affected the compliance schedule in two permits. The orders were stored in separate enforcement files. We suggested that the permit file contain a copy of the material or that the permit rationale contain a clear explanation of the role that the order or decree played in establishing limitations or the compliance schedule and a reference to the order's location in the enforcement file.

The second deficiency that was observed involved State comments on two draft permits. The Region declined to take the State comments into account before issuing the final permits. In both instances, the State requested an extension of the public comment period just before its end and then submitted comments to the Region after the close of the comment period. The Region did not respond to either set of comments in its response to comments published with the notice of final permit decision. Both permits were issued during the final quarter of the 1983 fiscal year.

The third deficiency related to the calculation of limitations for three pulp and paper permits. In each case design production figures, rather than actual production figures, were used in calculating the effluent limitations. In one case, the original permit was extended because its limitations were more stringent than guidelines limitations, regardless of which production figures were used to calculate the limitations. Both Myron Knudson and Bob Hannesschlager indicated that the approach was inconsistent with Regional policy on production-based limitations.

The final deficiency was a stormwater runoff discharge for which the permit did not contain limitations or monitoring requirements. Nonetheless, the permittee regularly reported monitoring results for the outfall.

Recommendations to the Region

In addition to reviewing the positive aspects and the deficiencies in the closing meeting, we also made two recommendations for improving the quality of the permits. The first recommendation was that the Region treat BCT limitations more consistently in the permit rationales. Rather than deferring judgment about BCT limitations beyond the 1984 compliance deadline, as was done in some permits, we recommended that the Region adopt a policy explicitly dealing with the relationship between BCT and BPT limitations. The second recommendation concerned the treatment of water quality conditions. We recommended that the permit rationales (in the fact sheets/statements of basis) include more extensive discussions of water quality, in particular receiving stream conditions and the use of mixing zones in water quality analyses.

cc: Myron Knudson
    Bill Diamond

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

Tom Laverty,
See p. 1/2
note.
B. J.

JUN 27 1984

OFFICE OF
WATER

MEMORANDUM

SUBJECT: Permit Quality Review in Region IV

TO: Martha Prothro, Director
Permits Division (EN-336)

FROM: Tom Laverty, Project Manager
Permit Quality Review Tom

THRU: Bill Jordan, Chief Bill
NPDES Technical Support Branch
Permits Division

The Permit Quality Review (PQR) team conducted a review of 19 major industrial permits during the week of April 30. The permits were issued by Region IV in 1982 and 1983. The team consisted of Gary Cohen, Gary Hudiburgh, Ed McHam (Region VI), Dick Williams (EGD), and me.

The team examined a set of permits that was characterized by good overall quality, with a sound technical foundation. The permits we reviewed generally contained appropriate limitations and conditions, with adequate supporting documentation. The permits also contained several provisions that could be useful to other Regions and the NPDES States. The team reviewed the Region IV permit procedures manual, which also could be a useful tool for other Regions and States. In addition, the team identified several areas of the permitting process in which it thought improvements could be made. We reviewed both the positive aspects and our suggestions for improvement with Jim Silva, John Marlar, and Jim Patrick on May 3. We discussed the results of the review in greater detail with Jim Patrick on May 4. Each major topic that we reviewed is discussed below.

Overall Quality of the Permits

The overall quality of the permits was good. The boilerplate currently in use is well-organized and largely complete. Most of the fact sheets, particularly those by Charlie Kaplan and Roosevelt Childress, provided clear and thorough explanations of the permit limitations. The monitoring and reporting provisions were appropriate.

P. Date 9/14/84

3.D.1.a.

PRELIMINARY
WATER ENFORCEMENT ACTIONS REPORT

4TH QUARTER FY84
FY84 SUMMARY

		Administrative Orders						Notices of Violations to States					
REGION	TOTAL ACTIONS	MUNI. MAJORS	MUNI. MINORS	NON MUNI. MAJORS	NON MUNI. MINORS	FED.	UN-PER.	MUNI. MAJORS	MUNI. MINORS	NON MUNI. MAJORS	NON MUNI. MINORS	FED.	UN-PER.
I	8 (46)	4 (29)	0 (1)	3 (8)	0 (1)	0(0)	0 (0)	0 (2)	0 (0)	1 (4)	0 (1)	0(0)	0(0)
II	10 (55)	5 (28)	0 (1)	4 (14)	1 (4)	0(0)	0 (1)	0 (7)	0 (0)	0 (0)	0 (0)	0(0)	0(0)
III	8 (161)	1 (92)	0 (28)	0 (4)	0 (11)	0(0)	0(10)	1 (6)	0 (0)	6 (10)	0 (0)	0(0)	0(0)
IV	19 (765)	4 (54)	1 (27)	4 (28)	5(622)	1(1)	4(14)	0(11)	0 (1)	0 (7)	0 (0)	0(0)	0(0)
V	3 (152)	3(121)	0 (2)	0 (7)	0 (3)	0(0)	0(14)	0 (4)	0 (1)	0 (0)	0 (0)	0(0)	0(0)
VI	68 (288)	50(202)	6 (28)	10 (42)	0 (2)	0(3)	2(10)	0 (0)	0 (0)	0 (0)	0 (1)	0(0)	0(0)
VII	0 (14)	0 (9)	0 (1)	0 (2)	0 (0)	0(0)	0 (1)	0 (1)	0 (0)	0 (0)	0 (0)	0(0)	0(0)
VIII	1 (37)	1 (17)	0 (1)	0 (1)	0 (0)	0(0)	0 (5)	0(12)	0 (0)	0 (1)	0 (0)	0(0)	0(0)
IX	21 (52)	0 (10)	1 (3)	0 (3)	0 (0)	0(0)	20(36)	0 (0)	0 (0)	0 (0)	0 (0)	0(0)	0(0)
X	4 (18)	0 (5)	1 (4)	0 (4)	0 (1)	0(0)	3 (4)	0 (0)	0 (0)	0 (0)	0 (0)	0(0)	0(0)
TOTAL THIS Q	142(1588)	68(567)	9 (96)	21(113)	6(644)	1(4)	29(95)	1(43)	0 (2)	7 (22)	0 (2)	0(0)	0(0)
TOTAL SAME Q 1983	244 (829)	17(306)	55(143)	24(106)	137(224)	-	-	7(34)	0 (3)	3 (11)	1 (2)	-	-

* Only documents received by the Water Enforcement Division (EN-338) are represented in the above figures.

Note 1. ( ) indicates cumulative total for current FY. Includes current quarter.

Note 2. Information on civil and criminal referrals to DOJ is now reported by OECM.

Note 3. Column heading Un-Per. refers to number of actions written against unpermitted violators.

Note 4. This is a preliminary report as of 9/14/84. All reports for the 4th quarter will not normally be in until about 11/15/84.

In addition to the normal limitations and conditions, the permits also contained several supplemental provisions that were useful additions to the permit. Among them were biomonitoring provisions, a BMP provision, and a reopener clause for use with BPJ permits.

The permits that we reviewed were the product of close collaboration with the Florida Department of Environmental Regulation. The permits incorporated the Florida certification by reference and, as a result, several permits included good water quality limitations and biomonitoring provisions.

Finally, the team examined the permit procedures manual used by Region IV. The manual, which included materials and information relating to all aspects of the permitting process, could easily be adapted as a training tool and reference by other Regions and States.

Areas for Improvement

The team noted six areas in which it thought Region IV could improve its permits. Those areas included the completeness of the fact sheets, the establishment of ocean discharge limitations, the calculation of production-based limits, the relation of the State certification to EPA-issued permit, the completeness of the administrative record for the permit, and the completeness of the boilerplate.

The team recommended that three types of improvements be made to the fact sheets. First, the fact sheet should include a specific determination that a particular limitation represents BAT, BCT, or NSPS. Second, the fact sheet should include an explanation when the permit does not limit a pollutant that was limited in the previous permit or that effluent data (e.g., from Form 2C) indicate may be a pollutant of concern. Third, the fact sheet should include, perhaps as an appendix, a summary of comments on the draft permit (or a statement that no comments were received) and an indication of the responses to those comments.

The second area involves two permits for facilities which discharge to the ocean. Section 403(c) of the Clean Water Act requires that ocean discharges be evaluated in terms of seven criteria before permit issuance. Two permits in the review did not include the material for the evaluation required by section 403(c).

The third area in which improvement could be made is the calculation of production-based limits. In one permit, design production numbers rather than the required actual production numbers were used to calculate the limitations. In other instances, the team thought that it would have been appropriate to confirm that the production numbers provided on Form 2C were truly representative of the applicant's discharge. Another way in which the Region could clarify the production basis would be to identify in the fact sheet the production numbers used in calculating the permit limitations and to indicate what level of production the numbers represent (e.g., the highest annual average for the previous five years).

As noted above, the permits incorporated the Florida certification by reference. In certain situations, numerical limitations and monitoring conditions required by certification were also included in the permit, with the statement that the limitation or condition was required by the Florida certification. Generally, this meant that the permit was strengthened by various provisions, such as one requiring effluent toxicity testing.

The team, however, expressed concern about two aspects of the State certification. One was the potential for confusion when conditions or limitations in the certification (which was made part of the permit by reference) and those in the permit cover the same outfall or activity, or when the certification contains a general reference requiring compliance with a part of the Florida administrative code. This situation could mean that the permittee would be uncertain about its obligation or that certain provisions in the permit would be unenforceable. The second concern related to a provision in the permits that automatically modified the permit to the less stringent technology-based limitations, if the State certification was stayed or vacated. This provision seems to conflict with the sections in the NPDES regulations that address permit modifications based on State certifications, sections 122.62 and 124.55(b). These sections specify the procedure for permit modification when a State certification is stayed or vacated.

The fifth area concerns the completeness of the administrative record. Several of the files did not contain the fact sheet, or contained one that didn't reflect changes that had been made since the previous permit. Because of these omissions the team was unable to evaluate these permits. In two other instances, effluent data were missing from the file. In another instance, the boilerplate was omitted from the final permit in the file. Most, if not all, of these problems could be corrected through tighter administrative controls.

The final area is the completeness of the boilerplate. The team suggested several additions to the boilerplate, including language on 24 hour reporting and the duty to provide information (40 CFR 122.41(h)).

cc: Paul Traina (IV)
    Bill Diamond

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OFFICE OF
WATER

JUL 9 1984

MEMORANDUM

SUBJECT: Permit Quality Review in Region I

TO: Martha Prothro, Director
Permits Division (EN-336)

FROM: Tom Laverty, Project Manager
Permit Quality Review
Tom Laverty

THRU: Bill Jordan, Chief
NPDES Technical Support Branch
Bill

The Permit Quality Review (PQR) team conducted a review of 22 major industrial permits during the week of May 14. The permits were issued during 1983 and 1984 by Region I. The review team consisted of Bob Cantilli, Gary Cohen, Bob Dellinger, Jack Newman (Region V), and me. The team reviewed permits that were well conceived and effectively developed, with very few exceptions. We met with Dave Fierra and Steve Silva on May 18 to discuss the results of the review, which included the team's favorable impressions and our suggestions for improvement. Those results are detailed below.

Overall Quality of the Permits

The overall quality of the permits was quite high. The supporting files were well organized and nearly always complete. A number of files included State fact sheets when the EPA-issued permit was based on the State permit, thus making review of the EPA permit easier. In addition, each file included responses to comments when significant comments were received, or an indication that no significant comments were received.

The boilerplate was current and complete. The Region had a clear and orderly permit issuance procedure, which provided for review within the Water Management Division of the water quality impacts of each permit. Finally, the fact sheets were generally well organized and clear, and included explanations when pollutants that might have been regulated were not regulated.

Areas for Improvement

The team made suggestions for improvements in five areas. Those areas were the fact sheet, the public notice, enforcement files, notices of deficiency, and the use of biomonitoring.

The most important area was the fact sheet, about which we made several suggestions. We suggested inclusion of a summary that clearly identified the type of and basis for each limitation (BAT, water quality, BCT; effluent guideline, BPJ, State standards). In addition, we recommended that the permit writer include more specific references when explaining the basis for a limitation (e.g., citation to specific subcategory of a guideline rather than to the category only, or citation to specific parts of the State water quality standards). We also suggested that any calculations used in developing limitations be included as an appendix to the fact sheet, particularly when production-based or BPJ limitations are involved. Finally, we recommended that the permit writer improve the water quality analysis in the fact sheet by including such information as the low flow of the receiving stream, or any fate and transport models included in the analysis.

The team also made recommendations in four other areas. We recommended that the public notice include more information on the discharging facility and on the nature of the discharge (e.g., the volume of the discharge). The team suggested that the permit file include a cross-reference to the enforcement file whenever an administrative order or consent decree affected the limits, conditions, or schedule in the permit. The team also suggested that the Region clarify language in its notice of deficiency to avoid conflict with the APA provision for extension of existing permits. Finally, the team recommended that the Region consider greater use of biomonitoring to supplement regular chemical monitoring in some permits (e.g., permits outside the metal finishing category).

cc: David Fierra (Region I)
    Bill Diamond

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

9/3 Merge V + VI

DATE: AUG 28 1984

SUBJECT: Clean Water Act Referrals

FROM: Frank M. Covington
Director, Water Management Division (W-1)

TO: Jack Ravan, Assistant Administrator
for Water (WH-556)

We have received and reviewed the memoranda recently sent to you from Regions 5 and 6 concerning their problems with civil referral actions. The attached information summarizes the status of Region 9's referrals, and shows that we have experienced some delays on the part of the Department of Justice (DOJ) during this past year.

The credibility of EPA's enforcement program rests upon our ability to promptly act to the extent necessary to obtain compliance. To ensure our ability to act in a timely manner, we recommend that EPA have the option of direct referrals to local U.S. Attorneys. We wish to endorse the recommendations of Regions 5 and 6 for renegotiating the referral process with DOJ.

Attachment

cc: Courtney Price, OECM
✓Rebecca Hanmer, OW
John Wise, DRA
Mary Ann Muirhead, ORC
Water Division Directors, 1-10

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

DATE: AUG 21 1984

SUBJECT: Status of EPA Region 9 Referrals

Mike Schulz

FROM: Mike Schulz (W-5-6)
Compliance and Information Systems Section

TO: Frank M. Covington (W-1)
Director, Water Management Division

The following describes the status of EPA Region 9 referrals as of August 21, 1984:

1. Titanium Metals Corp. Civil Action
Henderson, NV

Referred to EPA-HQ : 9/27/82
Referred to DOJ : 11/03/82
Referred to U.S. Attorney : 8/19/83
Filed : 8/26/83

Status: EPA has agreed to extend time for Timet to answer complaint to 8/10/84 while settlement discussions are being pursued. Timet filed answer 8/10/84. Next action: initiation of discovery.

2. Pima County - Ina Road STP Civil Action
Tucson, AZ

Referred to EPA-HQ : 7/5/83
Referred to DOJ : 8/9/83
Filed 12/6/83

Status: In discovery. EPA served interrogatories 8/15/84.

3. Halaco Engineering Civil Action
Oxnard, CA

Referred to EPA-HQ : 10/09/80
Referred to DOJ : 10/20/80
Referred to U.S. Attorney : 10/21/80
Filed : 10/21/80

Status: Hearing on summary judgement motion held 2/21/84; hearing on motion to dismiss held 1/23/84. Both matters taken under submission.

4. Hilo Coast Processing Co. — Civil Action
Pepeekeo, HI

Referred to EPA-HQ: 9/23/83
Referred to DOJ : 9/29/83

Status: Signed Consent Decree at U.S. Attorney for signature.

5. Hilo Transport and Terminal Co. — Civil Action

Referred to EPA-HQ : 2/29/84
Referred to DOJ : 2/29/84
Referred to U.S. Attorney : 4/09/84
Filed : 4/11/84

Status: Received settlement offer from defendant 8/10/84.

6. Port of Stockton — Civil Action
Stockton, CA

Referred to EPA-HQ: 3/29/84
Referred to DOJ : 4/24/84

Status: Case under DOJ review and may be included in possible air settlement rather than new filing. Air negotiations continuing.

7. Global Marine Drilling Co. — Civil Action
Santa Maria, CA

Referred to EPA-HQ: 3/29/84
Referred to DOJ : 4/20/84
Filed : Case has been filed.

Status: Global Marine's answer to complaint filed 8/15/84

8. Tosco Corporation — Civil Action
Martinez, CA

Referred to EPA-HQ: 6/28/84
Referred to DOJ : 7/18/84

Status: Not filed but settlement meeting requested by Tosco to be held 8/21/84.

9. Kachina Village Improvement District — Civil Contempt
Flagstaff, AZ

Referred to EPA-HQ: 6/28/84
Referred to DOJ : 7/19/84

Status: DOJ has requested letter from EPA justifying filing of a new complaint.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION V

DATE: JUL 30 1984

SUBJECT: Clean Water Act Referrals

FROM: Charles H. Sutfin
Director, Water Division

TO: Jack Ravan, Assistant Administrator
for Water (WH-556)

The purpose of this memo is to request your assistance in addressing a matter of increasing concern to Region V. From September 198~~4~~3 through March 1984, we sent in 11 Clean Water Act (CWA) cases for civil prosecution. EPA Headquarters promptly processed those actions and referred them to the Department of Justice (DOJ), generally within a month of receipt. Much to our increasing dismay and frustration, there the cases have resided. In those 11 cases there are 3 industrial referrals and 8 municipal referrals. Counting the time of referral through July 1984, the average residence time in DOJ is 166 days. This is well in excess of the time allowed in the existing DOJ-EPA Memorandum of Agreement. Our Office of Regional Counsel supervisors as well as individual attorneys have made repeated inquiries as to the status of the cases, when they would be referred to the U.S. Attorney and when they would be filed. All of this effort has been to little avail. To date, 7 of the cases still reside with DOJ in Washington. Four were recently filed.

It is my strong feeling that such inactivity by DOJ on these water cases severely undercuts the enforcement credibility of our Agency. The Agency continually stresses the need for civil referrals as an appropriate remedy under the CWA. This is especially important when it comes to implementing the National Municipal Policy. In these specific referred cases there are some of the more recalcitrant municipalities that clearly warrant civil action because of non-response to administrative actions at the State and Federal level and overall recalcitrance with respect to the requirements of the CWA. The States know we have made these referrals and they are aware that nothing has proceeded. We essentially are reduced to being "paper tigers" with our inability to deliver on civil litigation. Therefore our credibility in terms of suggesting the States escalate matters from administrative actions to judicial actions in the case of severe recalcitrance suffers from lack of demonstrable success on our part in following that path.

The common theme the DOJ-Headquarters states to our Office of Regional Counsel is they are so busy dealing with hazardous waste cases they do not have time to spend time on the water cases. When they do spend the few moments on the water cases, they invariably seem to find something that appears to be "deficient" so they can ask for more information before they decide to proceed. That generally delays meaningful action for several weeks until such time as they find time to get back to the water cases. By the time DOJ truly focuses on the case to move it to prosecution, they complain of the case being "old" and "stale".

Given all of the above, it is my recommendation our Agency immediately open negotiations with DOJ to eliminate the existing referral process and instead go to a true direct referral between the Regional offices of U.S. EPA to the individual U.S. Attorneys. Carbon copies of the referrals would be sent to EPA Headquarters for their review as well as DOJ-Headquarters for their review. There would be a 21 day period in which either of the Headquarter Offices could put a hold on the case subject to resolution of any key issues. Failure of DOJ-Headquarters or EPA to act within the 21 days would be clear authorization for the U.S. Attorney to file the action. I think this proposal would be in keeping with the present demonstrated attitude and action by DOJ. If the water cases truly are lower priority because it is a mature program, then it stands to reason that the DOJ-Headquarters should not be concerned with the intimate details of the case and should rely on their U.S. Attorneys to take the necessary actions. DOJ-Headquarters would not be removed from the process in that they would have a window in which to make their feelings known. A process similar to this existed in the early days of EPA and worked very well.

Last year, the Agency entered into an agreement with DOJ for a limited trial of the "direct referral process". That direct referral process was not truly a "direct referral". All it did was eliminate the EPA Headquarters review which has historically not been an impediment to the referral process especially with respect to the CWA and the Safe Drinking Water Act cases. Therefore, I urge you to approach the Administrator and Deputy Administrator with the thought of reopening negotiations to reassess the existing "direct referral process" and move towards a true direct referral as described above.

During the pendency of the above discussion, I would strongly request you do whatever is possible through your offices to spring these very important water cases free from the DOJ. Every day these cases remain unfiled and therefore unresolved, severe pollution problems are continuing. In several of these cases we had hoped that immediate action would occur so that a construction schedule could be agreed to and we would not waste the 1984 construction season. That has not occurred. If we wait much longer we will seriously impinge on the 1985 construction season. Again for every day that goes by the insult to the environment continues and in several instances the insult becomes worse.

If you would care to discuss this in greater detail, I would be more than happy to do so. It is my understanding that several other Regions are experiencing similar problems in getting DOJ to act on their cases. You may want to inquire as to their experiences.

I would appreciate hearing from you on what actions will be taken to address this very serious matter.

cc: Courtney Price, OECM
Rebecca Hanmer, OW
Valdas V. Adamkus, ORA
Robert Schaefer, ORC
Water Division Directors

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

8-14-84
H

DATE August 10, 1984

SUBJECT Clean Water Act Referrals

FROM Myron O. Knudson Myron O. Knudson
Director, Water Management Division (6W)

TO Jack Ravan, Assistant Administrator
Office of Water (W4-556)

We read, with great interest, Charles Sutfin's memo of July 30 to you concerning problems with civil referral actions.

This memo is right on target and receives our full endorsement. Our regional experience is that our cases, both municipal and industrial, are simply not moving towards resolution. In fiscal year '85 we expect to refer 12 to 15 NPDES cases; however, the Department of Justice (DOJ) will settle only some three (3) cases in this year. We simply cannot continue to build a larger-and-larger backlog of unsettled cases. We are now up to a total of 18 pending water cases.

For whatever reason DOJ has not exhibited any apparent motivation directed towards the efficient settlement of cases. It appears DOJ is interested primarily in seeing that cases go to trial as opposed to pushing for rapid out-of-court settlements. This is particularly troublesome to a mature program such as ours, where our experience over the last 10 years has shown that over 90% of our cases can be resolved by EPA personnel out of court in a reasonably rapid manner.

A return to direct referrals to the local U.S. Attorneys, as suggested by Region 5, would certainly be a step in the right direction. We would, however, oppose DOJ having the ability to put any case on hold; in as much as it has been our recent experience that DOJ will put every case on hold if given the opportunity.

We recommend that a small work group be formed with equal representation from regional and headquarters, program and legal personnel to develop an Agency proposal for handling water referrals. We should then move quickly to renegotiate the referral process with DOJ.

cc: Courtney Price, OECM
Rebecca Hanmer, OW
Dick Whittington, 6A
Paul Seals, 6ORC
Water Division Directors, 1-10

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

SEP 14 [illegible]

OFFICE OF
WATER

MEMORANDUM

SUBJECT: Clean Water Act Referrals

FROM: Jack E. Ravan
Assistant Administrator for Water

TO: Charles H. Sutfin, Director
Water Management Division, Region V

Myron O. Knudson, Director
Water Management Division, Region VI

As you can imagine, we were very concerned when we received your memoranda concerning the delays in filing cases which had been referred to the Department of Justice by EPA. I asked the Office of Water Enforcement and Permits to work with OECM in resolving this issue and I believe we have received a reasonably favorable response from Steve Ramsey at the Department of Justice. Richard Mays met with Steve Ramsey, and Steve has agreed to undertake an affirmative program to cut down on the delays as much as possible. According to Mays, procedures have been instituted that should cut down on requests for additional information and I believe you have received information on this. We are told that the water cases are not necessarily getting neglected, and OECM believes that their analysis bears this out. The overall volume of cases has caused some problems at Justice, and the Department is getting more lawyers, which should help. Further, Glenn Unterberger has started having monthly meetings with Ramsey's branch chiefs on pending cases and Mays has been regularly meeting with Ramsey on case status.

Also, Ramsey agreed to look into the issue of direct referral proceedings to certain U.S. attorneys. This is an issue that cuts across more agencies than EPA and is a deeply ingrained problem. According to Mays, Steve Ramsey indicated that the concern was not so much EPA Regions as it was the U.S. attorneys' offices in some cities. As I understand it, Steve Ramsey would look into which U.S. attorney offices have the most experience in environmental cases and try to work out a process for referrals in those particular areas. Chicago is apparently one of the areas that would be considered.

I think a fair summary of what has happened is that we have gotten DOJ's attention on the immediate backlog and are reasonably certain that they will make every effort to speed up the filing of the water cases now pending. Further, OECM has a tracking system which needs more visibility at the Deputy Administrator level. One option that the Office of Water suggested to Deputy Administrator Alm at the third quarter SPMS meeting, is to track referrals after they leave EPA through SPMS. In addition, expansion of direct referrals is being explored by OECM and DOJ as explained in Richard Mays' August 23 memorandum to Rebecca Hanmer (you were shown as receiving copies).

I understand that the Water Division Directors asked that a meeting be set up with the Department of Justice and OECM to discuss this and other referral issues. The Office of Water is exploring this idea with OECM recognizing that all program areas are experiencing delays that may need to be dealt with simultaneously.

cc: Richard Mays
Glenn Unterberger
Water Management Division Directors
Regions I-IV, VII-X

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

SEP 14 [illegible]

OFFICE OF
WATER

MEMORANDUM

SUBJECT: Clean Water Act Referrals

FROM: Jack E. Ravan
Assistant Administrator for Water

for Henry Longest II

TO: Charles H. Sutfin, Director
Water Management Division, Region V

Myron O. Knudson, Director
Water Management Division, Region VI

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cc: Richard Mays
Glenn Unterberger
Water Management Division Directors
Regions I-IV, VII-X

MEMORANDUM OF UNDERSTANDING
BETWEEN
THE DEPARTMENT OF JUSTICE
AND
THE ENVIRONMENTAL PROTECTION AGENCY

WHEREAS, the Department of Justice conducts the civil litigation of the Environmental Protection Agency;

WHEREAS, the conduct of that litigation requires a close and cooperative relationship between the attorneys of the Department of Justice and of the Environmental Protection Agency;

WHEREAS, the achievement of a close and cooperative relationship requires a clarification of the respective roles of the attorneys of the Department of Justice and of the Environmental Protection Agency;

WHEREAS, the Attorney General may decline to represent the Agency in particular civil actions, in which case the Agency may be represented by its own attorneys; and

WHEREAS, most challenges to and enforcement of regulatory standards and procedures adopted by the Environmental Protection Agency involve scientific, technical, and policy issues and determinations developed in lengthy rulemaking proceedings in which the Agency's attorneys have been involved and can provide the necessary expertise.

NOW, therefore, the following memorandum of understanding is entered into between the Attorney General of the United States and the Administrator of the Environmental Protection Agency for the purpose of promoting the efficient and effective handling of civil litigation involving the Environmental Protection Agency;

1. The Attorney General of the United States (hereinafter referred to as the "Attorney General") shall have control over all cases to which the Environmental Protection Agency (hereinafter referred to as the "Agency") or the Administrator of the Environmental Protection Agency (hereinafter referred to as the "Administrator") is a party.

2. When requested by the Administrator, the Attorney General shall permit attorneys employed by the Agency (hereinafter referred to as "Agency participating attorneys") to participate in cases involving direct review in the Courts of Appeal and shall also permit such attorneys to participate in other civil cases to which either the Agency or the Administrator are a party, provided, however, that:

(a) the Administrator or his delegate shall designate a specific Agency participating attorney for each case and shall communicate the name of such attorney in writing to the Attorney General;

(b) such Agency participating attorney shall be subject to the supervision and control of the Attorney General; and

(c) if required by the Attorney General, an Agency participating attorney shall be appointed as a Special Attorney or Special Assistant United States Attorney and take the required oath prior to conducting or participating in any kind of Court proceedings.

3. Agency attorneys shall not file any pleadings or other documents in a court proceeding without the prior approval of the Attorney General.

4. It is understood that participation by Agency attorneys under this memorandum includes appearances in Court, participation in trials and oral arguments, participation in the preparation of briefs, memoranda and pleadings, participation in discussions with opposing counsel, including settlement negotiations, and all other aspects of case preparation normally associated with the responsibilities of an attorney in the conduct of litigation; provided, however, that the Attorney General shall retain control over the conduct of all litigation. Such control shall include the right to allocate tasks between attorneys employed by the Department of Justice and Agency participating attorneys. In allocating tasks between the Department's and the Agency's attorneys, the Attorney General shall give due consideration to the substantive knowledge of the respective attorneys of the matter at issue so that the Government's resources are utilized to the best advantage.

5. In the event of any disagreement between attorneys of the Department of Justice and of the Agency concerning the conduct of any case, the Administrator may obtain a review of the matter in question by the Attorney General. The Attorney General shall give full consideration to the views and requests of the Agency and shall make every effort to eliminate disagreements on a mutually satisfactory basis. In carrying out such reviews, the Attorney General shall consult with the Administrator. In implementing this provision, it is understood that the Attorney General will not be expected by the Administrator to interfere with the direction of any trial in progress.

6. The settlement of any case in which the Department of Justice represents the Agency or the Administrator shall require consultation with and concurrence of both the Administrator and the Attorney General.

7. The Administrator and the Attorney General shall make an annual review of both the Department's and the Agency's personnel requirements for Agency litigation. The Attorney General and the Administrator will cooperate in making such appropriation requests as are required to maintain their respective staffs at a level adequate to the needs of the Agency's litigation.

8. The Attorney General shall establish specific deadlines, not longer than 60 days, within which the Department's Attorneys must either file complaints in Agency cases

or report to the Attorney General why any such complaint has not been filed. In the event any Department Attorney does not file a complaint, he shall thereafter submit further periodic reports to the Attorney General until the complaint is filed or a decision is reached that it shall not be filed. Copies of the reports required by this section shall be provided to the Agency if requested.

9. If the Attorney General fails to file a complaint within 120 days of the referral of a request for litigation and a litigation report by the Agency to the Attorney General, then the Administrator may request the Attorney General to file a complaint within 30 days. Failure of the Attorney General to thereafter file a complaint within the said 30 days may be considered by the Administrator or his delegate to be a failure of the Attorney General to notify the Administrator within a reasonable time that he will appear in litigation for purposes of Section 305 of the Clean Air Act, 42 U.S.C. 1857h-3, Section 506 of the Federal Water Pollution Control Act, 33 U.S.C. 1366, or Section 1450 of the Safe Drinking Water Act, 42 U.S.C. 300j-9; provided, however, that the failure of the Attorney General to file a complaint within the time period requested by the Administrator in a case in which the Administrator requested immediate action under Sections 311(e) and 504 of the Federal Water Pollution Control Act, 33 U.S.C. 1321, 1364; Section 303 of the Clean

Air Act, 42 U.S.C. 1857h-1; or Section 1431 of the Safe Drinking Water Act, 42 U.S.C. 300i; to protect public health may also be considered by the Administrator to be a failure of the Attorney General to so notify the Administrator under Section 305 of the Clean Air Act, 506 of the Federal Water Pollution Control Act or Section 1450 of the Safe Drinking Water Act.

10. All requests of the Agency for litigation shall be submitted by the Agency through its General Counsel or its Assistant Administrator for Enforcement to the Assistant Attorney General for the Land and Natural Resources Division or for the Civil Division, except matters requiring an immediate temporary restraining order may be submitted by regional Administrators of the Agency simultaneously to a United States Attorney and the appropriate Assistant Attorney General. All requests for litigation shall be accompanied by a standard litigation report which shall contain such information as shall be determined from time-to-time by the Attorney General to be necessary in order to prosecute Agency litigation. Similar reports shall also be provided for suits in which the Agency or the Administrator is a defendant, as requested by the Attorney General.

11. The Agency shall make the relevant file of any matter that is the subject of litigation available to attorneys for the Department of Justice at a convenient

location when a request for litigation is submitted or when the Department is required to defend the Agency or the Administrator.

12. The Administrator shall undertake to review the Agency's procedures for the preparation of the record in cases involving direct review in the Courts of Appeal, including analyses of such matters as assembly, indexing, pagination, timing of preparation, and the allocation of tasks between the Agency and the Department. The Administrator shall consult with the Attorney General on the re-examination of these procedures.

13. The negotiation of any agreement to be filed in court shall require the authorization and concurrence of the Attorney General.

14. In conducting litigation for the Administrator, the Attorney General shall defer to the Administrator's interpretation of scientific and technical matters.

15. Nothing in this agreement shall affect any authority of the Solicitor General to authorize or decline to authorize appeals by the Government from any district court to any appellate court or petitions to such courts for the issuance of extraordinary writs, such as the authority conferred by 28 CFR 0.20, or to carry out his traditional functions with regard to appeals to or petitions for review by the Supreme Court.

16. In order to effectively implement the terms of this Memorandum, the Attorney General and the Administrator will

transmit copies of this Memorandum to all personnel affected by its provisions. This Memorandum shall not preclude the Department and the Agency from entering into mutually satisfactory arrangements concerning the handling of a particular case.

17. This Agreement shall apply to all cases filed on or after the date of approval of this Agreement by the Attorney General and the Administrator.

18. The Attorney General and the Administrator may delegate their respective functions and responsibilities under this Agreement.

19. The Department and the Agency shall adjust the conduct of cases arising before the effective date of this Agreement in a manner consistent with the spirit of this Agreement.

Griffin B. Bell
GRIFFIN B. BELL
Attorney General

Date: June 15, 1977

DOUGLAS M. COSTLE
Administrator
Environmental Protection Agency

Date: June 15, 1977

Smith, French -

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

AUG 21 1981

THE ADMINISTRATOR

Honorable William French Smith
The Attorney General
Washington, D.C. 20530

RE: Memorandum of Understanding Between the Department of Justice And the Environmental Protection Agency

Dear Mr. Attorney General:

Under Paragraph 10 of the Memorandum of Understanding between the Department of Justice and the Environmental Protection Agency dated June 15, 1977 (copy enclosed), EPA's General Counsel and Assistant Administrator for Enforcement, EPA, were given authority to request civil litigation from the Department of Justice.

On July 1, 1981, the Environmental Protection Agency underwent an internal reorganization which resulted, in part, in the abolishment of the Office of Enforcement as well as the position of Assistant Administrator for Enforcement. In addition, the Office of General Counsel was placed under an Associate Administrator for Legal Counsel and and Enforcement.

The principal enforcement authorities previously delegated to the Assistant Administrator for Enforcement were redelegated to the Associate Administrator for Legal Counsel and Enforcement on July 14, 1981. Therefore, the authority previously vested in the Assistant Administrator for Enforcement under the above referenced memorandum now resides in the Associate Administrator for Legal Counsel and Enforcement.

Accordingly, requests to the Department of Justice for routine civil litigation under the terms of the Memorandum of Understanding will now come from the Associate Administrator for Legal Counsel and Enforcement. The present Associate Administrator for Legal Counsel and Enforcement is Mr. Frank A. Shepherd.

This reorganization and redelegation does not, of course, affect the authority of Regional Administrators who may continue to request litigation under Paragraph 10 of the Memorandum of Understanding in matters requiring an immediate temporary restraining order.

Sincerely yours,

Anne M. Gorsuch

Anne M. Gorsuch

cc: Assistant Attorney General
Land and Natural Resources Division

Assistant Attorney General
Civil Division

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

SEP 29 1983

OFFICE OF THE
ADMINISTRATOR

Honorable F. Henry Habicht, II
Acting Assistant Attorney General
Land and Natural Resources Division
U.S. Department of Justice
Washington, D.C. 20530

Dear Hank:

As a result of our meeting on Thursday, September 8, 1983 and the subsequent discussions of respective staffs, we are in agreement that, subject to the conditions set forth below, the classes of cases listed herein will be referred directly from EPA's Regional Offices to the Land and Natural Resources Division of the Department of Justice in Washington, D.C.

The terms, conditions and procedures to be followed in implementing this agreement are:

1. The Assistant Administrator for Enforcement and Compliance Monitoring will waive for a period of one year the requirement of the Assistant Administrator's prior concurrence for referral to the Department of Justice for the following classes of judicial enforcement cases:

    (a) Cases under Section 1414(b) of the Safe Drinking Water Act which involve violations of the National Interim Primary Drinking Water Regulations, such as reporting or monitoring violations, or maximum contaminant violations;

    (b) The following cases under the Clean Water Act:

        (i) cases involving discharges without a permit by industrial dischargers;

        (ii) all cases against minor industrial dischargers;

        (iii) cases involving failure to monitor or report by industrial dischargers;

- (iv) referrals to collect stipulated penalties from industrials under consent decrees;
- (v) referrals to collect administrative spill penalties under Section 311(j) of the CWA;

(c) All cases under the Clean Air Act except the following:

- (i) cases involving the steel industry;
- (ii) cases involving non-ferrous smelters;
- (iii) cases involving National Emissions Standards for Hazardous Air Pollutants;
- (iv) cases involving the post-1982 enforcement policy.

2. Cases described in Section 1, above, shall be referred directly from the Regional Administrator to the Land and Natural Resources Division of DOJ in the following manner:

(a) The referral package shall be forwarded to the Assistant Attorney General for Land and Natural Resources, U.S. Department of Justice (DOJ), with copies of the package being simultaneously forwarded to the U.S. Attorney (USA) for the appropriate judicial district in which the proposed case is to be filed (marked "advance copy-no action required at this time"), and the Assistant Administrator for Enforcement and Compliance Monitoring (OECM) at EPA Headquarters. OECM shall have the following functions with regard to said referral package:

- (i) OECM shall have no responsibility for review of such referral packages, and the referral shall be effective as of the date of receipt of the package by DOJ; however, OECM shall comment to the Region upon any apparent shortcomings or defects which it may observe in the package. DOJ may, of course, continue to consult with OECM on such referrals. Otherwise, OECM shall be responsible only for routine oversight of the progress and management of the case consistent with applicable present and future guidance. OECM shall, however, retain final authority to approve settlements on behalf of EPA for these cases, as in other cases.
- (ii) The referral package shall be in the format and contain information provided by guidance memoranda as may be promulgated from time to time by OECM in consultation with DOJ and Regional representatives.

(iii) DOJ shall, within 30 days from receipt of the *referral package*, determine (1) whether the Lands Division of DOJ will have lead responsibility for the case; or (2) whether the USA will have lead responsibility for the case.

While it is agreed that to the extent feasible, cases in which the USA will have the lead will be transmitted to the USA for filing and handling within this 30-day period, if DOJ determines that the case requires additional legal or factual development at DOJ prior to referring the matter to the USA, the case may be returned to the Regional Office, or may be retained at the Lands Division of DOJ for further development, including requesting additional information from the Regional Office. In any event, DOJ will notify the Regional Office, OECM and the USA of its determination of the lead role within the above-mentioned 30-day period.

(iv) Regardless of whether DOJ or the USA is determined to have lead responsibility for management of the case, the procedures and time limitations set forth in the MOU and 28 CFR §0.65 et seq., shall remain in effect and shall run concurrently with the management determinations made pursuant to this agreement.

3. (a) All other cases not specifically described in paragraph 1, above, which the Regional Offices propose for judicial enforcement shall first be forwarded to OECM and the appropriate Headquarters program office for review. A copy of the referral package shall be forwarded simultaneously by the Regional Office to the Lands Division of DOJ and to the USA for the appropriate judicial district, the USA's copy being marked "advance copy-no action required at this time."

(b) OECM shall review the referral package within twenty-one (21) calendar days of the date of receipt of said package from the Regional Administrator and shall, within said time period, make a determination of whether the case should be (a) formally referred to DOJ, (b) returned to the Regional Administrator for any additional development which may be required; or (c) whether the Regional Administrator should be requested to provide any additional material or information which may be required to satisfy the necessary and essential legal and factual requirements for that type of case.

(c) Any request for information, or return of the case to the Region shall be transmitted by appropriate letter or memorandum signed by the AA for OECM (or her designee) within the aforementioned twenty-one day period. Should OECM concur in the proposed referral of the case to DOJ, the actual referral shall be by letter from the AA for OECM (or her designee) signed within fourteen days of the termination of the aforementioned twenty-one day review period. Copies of the letters referred to herein shall be sent to the Assistant Attorney General for the Lands Division of DOJ.

(d) Upon receipt of the referral package by DOJ, the procedures and time deadlines set forth in paragraph No. 8 of the MOU shall apply.

In order to allow sufficient time prior to implementation of this agreement to make the U.S. Attorneys, the Regional Offices and our staffs aware of these provisions, it is agreed that this agreement shall become effective December 1, 1983. Courtney Price will distribute a memorandum within EPA explaining this agreement and how it will be implemented within the Agency. (You will receive a copy.)

I believe that this agreement will eliminate the necessity of formally amending the Memorandum of Understanding between our respective agencies, and will provide necessary experience to ascertain whether these procedures will result in significant savings of time and resources. In that regard, I have asked Courtney to establish criteria for measuring the efficacy of this agreement during the one year trial period, and I ask that you cooperate with her in providing such reasonable and necessary information as she may request of you in making that determination. At the end of the trial period—or at any time in the interval—we may propose such adjustments in the procedures set forth herein as may be appropriate based on experience of all parties.

It is further understood that it is the mutual desire of the Agency and DOJ that cases be referred to the USA for filing as expeditiously as possible.

I appreciate your cooperation in arriving at this agreement. If this meets with your approval, please sign the enclosed copy in the space indicated below and return the copy to me for our files.

Sincerely yours,

Alvin L. Alm

Alvin L. Alm
Deputy Administrator

Approved: F Hy Habicht

F. Henry Habicht, II
Acting Assistant Attorney General
Land and Natural Resources Division
U.S. Department of Justice

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

MAR 8 1984

OFFICE OF
ENFORCEMENT AND
COMPLIANCE MONITORING

MEMORANDUM

SUBJECT: Headquarters Review and Tracking of Civil Referrals

FROM: Courtney M. Price
Assistant Administrator
Office of Enforcement and Compliance Monitoring

TO: Regional Administrators
Regions I-X

Regional Counsels
Regions I-X

Associate Enforcement Counsels

The Office of Enforcement and Compliance Monitoring is committed to working cooperatively with Regional Offices to track civil enforcement litigation and to generally improve management of EPA's enforcement litigation. The following procedures provide for expedited handling of case referrals which continue to be reviewed by Headquarters and for oversight of "direct" case referrals. They also clarify roles in the management of various classes of judicial actions. This guidance supplements and, where inconsistent, supersedes previous guidance on review and tracking of civil referrals.

I. CLASSIFICATION OF REFERRALS

Four distinct classes of cases have evolved in the Agency's civil judicial enforcement program. Those classes of cases and roles in handling each class may be described as follows:

Class I: Nationally managed cases involving highly significant and precedential issues of major importance in the particular program, or involving activities in more than one Region. The lead legal and/or technical responsibilities in such cases usually rest in Headquarters, with assistance from the Regional office(s).

Class II:	Cases involving issues of significance which may be unique or precedential, or which are important to establish or further Agency enforcement goals. The lead legal and technical responsibilities in such cases usually rest in the Regional offices, with substantial assistance and oversight from Headquarters.
Class III:	Cases which are significant and important to Agency enforcement goals, but which are not likely to raise issues which are unique or precedential. The lead legal and technical responsibilities in such cases rest in the Regional offices. Headquarters involvement will be limited to general oversight to ensure that Agency policies are followed and that cases are being prosecuted in an expeditious manner. Routine communications should take place directly between Regional attorney staff and the Department of Justice or U.S. Attorneys.
Class IV:	Cases which may be referred directly from the Regions to Department of Justice (DOJ) Headquarters pursuant to the September 29, 1983 letter agreement between Alvin L. Alm for EPA and F. Henry Habicht, II for DOJ (copy attached). Direct referrals are presently authorized for the more routine cases in the Air and Water programs. Headquarters attorney involvement in those cases will be limited to summary review and oversight as described herein. Routine communications should take place between Regional Attorney Staff and DOJ or U.S. Attorneys.

The classes of cases which fall within the Class IV are set forth with specificity in the letter agreement between Alvin Alm and F. Henry Habicht, II dated September 29, 1983. For all other cases, the initial determination of category and lead responsibilities will be made by the Regional Administrator at the time the referral package is forwarded to Headquarters for review. That determination should be included as a part of the cover memorandum accompanying and summarizing the referral package. Unless the Associate Enforcement Counsel for the appropriate OECM division disagrees, the case will be handled accordingly. Should the Associate Enforcement Counsel believe that the case has been miscategorized, he or she should consult with the Regional Administrator or the designated Regional enforcement contact regarding the classification of the case or decision on lead responsibilities. The Associate will also notify the Regional Counsel of the issue. If agreement cannot be achieved, I will determine the appropriate classification and lead responsibilities after consultation with all relevant parties within the Agency.

After the initial classification of a case, facts may develop or issues arise which will justify a reclassification. Either the Associate Enforcement Counsel or the Regional Administrator (or the designated Regional enforcement contact person) may suggest reclassification of a case or modification of lead responsibilities. The decision on reclassification will be made as described above for original classification.

II. EVALUATION OF DIRECT REFERRALS

On December 1, 1983 we started a one year trial period for direct referral of certain types of enforcement litigation to the Department of Justice. The types of civil enforcement cases for which I have waived the requirement of concurrence are listed in a September 29, 1983 letter from Alvin L. Alm to F. Henry Habicht, II (copy attached). Procedures for implementing the direct referral process were detailed in a November 28, 1983, memorandum I addressed to Regional Administrators, Regional Counsels and Headquarters staff (copy attached). As a point of clarification, it is my intent that contempt actions may also be handled as direct referrals if the original case would meet the current criteria for direct referral.

Headquarters will review and evaluate the information copy required to be furnished to EPA Headquarters when each direct referral is sent to the Department of Justice. Associate Enforcement Counsels for the programs where direct referrals are utilized will prepare checklists which, at a minimum, provide for review of the following criteria:

A. Appropriateness of direct referral

The case should be clearly within one of the categories enumerated in the September 29, 1983, letter from Alvin Alm to F. Henry Habicht, II for which direct referral may be used. Contempt actions in cases which fit the direct referral categories may also be handled through direct referral procedures.

B. Format of the cover memorandum

The referral package should include the Case Data and Facility Data forms and a cover memorandum which identifies and discusses at least the following subjects: nature of the case, cause of action, proposed remedy, issues of national or precedential significance, description of consultation for case development (including names of Headquarters and DOJ attorneys contacted), identification of Regional contact persons, and basis for treating case as a direct referral.

C. Substantive adequacy of direct referrals

Each direct referral package should contain the following elements:

1. An adequate cause of action;
2. Description of evidence sufficient to prove the violations (copies of documentary evidence should be attached, if possible, and the person(s) with custody of all evidence should be identified);
3. Evaluation of potential defendants and a discussion of why the named defendants were selected;
4. Discussion of State involvement in efforts to resolve the violations;
5. Evaluation of potential defenses and how they can be refuted;
6. Evaluation of issues of precedential significance in the case, including a discussion about how the positions proposed by the Regional Office are consistent with law and national policy;
7. Description of the environmental harm to be remedied or other reasons which justify prosecution of the case at the time of referral;
8. Description of the remedy to be sought or the specific discovery required to establish a remedy in the case;
9. Discussion of penalties to be sought (a) if the case proceeds to trial and (b) as an initial settlement position; and

10. Description of attempts made to settle the case, problems encountered in settlement discussions, and the date of the last contact with the source owner or other potential defendant.

Within 30 calendar days after receiving the information copy of a direct referral the Associate Enforcement Counsel will send a copy of the completed checklist to the Regional Office, maintaining a file copy to serve as a basis for periodic evaluation.

If a case which is not within the category for direct referral is erroneously sent through the direct referral process, the Associate Enforcement Counsel will prepare a response ranging from a simple notice to the Region indicating why the direct referral was erroneous to a withdrawal from the Department of Justice. If a case which should have been directly referred to the Department of Justice is erroneously sent to Headquarters for concurrence, the Associate will, after consultation with the Region, forward it to the Department of Justice as a direct referral. A copy of the memorandum forwarding the case to the Department of Justice will be sent to the Region.

III. TRACKING ALL REFERRALS IN THE COMPUTER DOCKET

All civil cases must be entered and tracked in the Enforcement Docket System. Guidance on responsibilities for docket procedures is contained in memoranda dated April 21, 1983, November 23, 1983, and November 28, 1983 (copies attached). The following docket guidance supplements and, where inconsistent, supersedes those memoranda.

Each Regional attorney has primary responsibility for updating all of his or her active cases as part of the monthly update procedures. Headquarters attorneys will also continue to provide information to the system. Case Status Update reports will be sent on or about the first of each month to the Regional Docket Control or Regional Coordinator for distribution to the responsible Regional attorneys. By the 10th of each month, the Regional attorney must see that an update is submitted to the Regional data analyst (if the Region has one) or is mailed to Headquarters Docket Control, Bruce Rothrock (LE-130A).

As with all referrals, an information copy of direct referrals must be sent to Headquarters, directed to my attention, and must include completed Case Data and Facility Data Forms (copies of those forms are attached). The Correspondence Control Unit (CCU) will route the package to the appropriate

OECM division, and will give the Case Data Form, the Facility Data Form, and a copy of the cover letter referral memorandum to Headquarters Docket Control for entry of the case into the Docket System. Regions with Regional Docket Control should give copies of the Case and Facility Data Forms and the referral memorandum directly to regional data analyst for entry into the system. Failure to attach those forms may result in the cases not being entered in the Docket System, and the Region not receiving credit for the case at the time of referral.

Copies of direct referral packages are to be sent simultaneously to the Department of Justice and EPA Headquarters. The "Date to EPA Headquarters" and the "Date Referred to DOJ" shown in the Case Docket System will be the date on the cover letter from the Regional Administrator. The System is being modified so that direct referrals will be identified and can be separately retrieved from the System. A new event for "Date Received EPA HQ" will also be added. This event will be used as an approximate date when the Land and Natural Resources Division, Department of Justice, receives the referral package and, consequently, when the thirty day clock begins to run for determining whether Headquarters DOJ or the U.S. Attorney will have the lead litigation responsibilities as provided in the September 29, 1983 letter agreement between Alvin Alm and Henry Habicht, II.

IV. REFERRALS REQUIRING CONCURRENCE

The review criteria for direct referrals contained in this memorandum also apply to cases which require Headquarters concurrence. Rather than incorporating the results of review in a file checklist, however, the results will be incorporated in the memorandum that Associates prepare for me recommending whether to refer the case to the Department of Justice or return the case to the Region. A copy of the memorandum will be sent to the Region. If the case represents a type that should be considered for direct referral in the future, the memorandum addressed to me should so indicate.

All settlements require Headquarters concurrence. Thus, referrals which include a consent decree to be filed with the complaint require Headquarters concurrence. Such referrals should contain the following elements:

1. A clear statement of a cause of action;
2. Identification and discussion of any issues of national significance;

3. Analysis justifying proposed penalties in terms of applicable penalty policies; and

4. An enforceable consent decree which (a) resolves the violation, (b) is in accordance with requirements of applicable statutes, regulations and policies and (c) includes an appropriate termination date or specifies some other process for concluding the court's jurisdiction. See "Guidance for Drafting Judicial Consent Decrees" (GM-17) issued October 19, 1983 for a complete description of consent decree requirements.

V. MANAGING THE CIVIL ENFORCEMENT DOCKET

Involvement by the Associate Enforcement Counsels in all cases, including those that do and do not require Headquarters concurrence, will provide a basis for developing national expertise and will identify areas where national guidance is needed. In addition it will prepare us to respond quickly when settlement proposals are submitted for approval. We must ensure that litigation is expeditiously prosecuted, that national policies are implemented and that statutory requirements are scrupulously observed. Whenever Headquarters identifies a problem, the Associate Enforcement Counsel should communicate with the Regional Counsel and Department of Justice. Where quick resolution cannot be informally achieved, the Associate should communicate in writing on the subject to the Regional Office and Department of Justice and place a copy of the memo in the Headquarters case file. I rely on the judgment of each Associate as to when a matter is of sufficient importance that it should be called to my attention.

The Associate Enforcement Counsels will monitor the activities of the Regions and the Department of Justice to make sure that all cases are vigorously prosecuted after referral. Extensive informal discussions and efforts at voluntary resolution normally occur prior to referral. We should move forward resolutely when litigation is required. Settlement discussions may, of course, proceed on a parallel track, but they generally should not result in suspension of litigation activities. My November 28, 1983 memorandum describing procedures for implementation of direct referrals specifically requires that I concur in any delay after a case has been referred to the Department of Justice. Whether or not the case was directly referred, the Associates should identify and call to my attention any instance where the government has caused or agreed to delay in the filing or prosecution of any case without my consent.

The Associate Enforcement Counsels will use the computerized enforcement docket and other available information to monitor the overall litigation effort. In addition, they and their staffs will make periodic visits to Regional offices to fulfill this office's oversight role. Unless action is required to ensure that an Agency policy or a legal requirement is followed, or that a case is prosecuted expeditiously, this office will not interject itself into individual Class III or Class IV cases. Headquarters attorneys may, at the request of a Regional office to the Associate Enforcement Counsel, provide assistance, consistent with resource availability and other priorities.

My November 28, 1983 memorandum on direct referrals indicates that Regional offices should obtain Headquarters approval for settlement proposals before they are forwarded to the defendant. This procedure should apply to to all cases whether or not they were directly reffered. Each Associate Enforcement Counsel is authorized to approve settlements at this stage, using his or her judgment whether to confer with me on critical issues before agreeing to a proposal. The Associate will make sure the settlement meets the criteria set forth above for consent decrees, complies with all applicable policies and laws, and is consistent with national program objectives. I must approve all final settlements before they are filed in court.

Attachments

cc: Office Directors, OECM

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, DC 20460

SEP 7 1982

OFFICE OF
LEGAL AND ENFORCEMENT COUNSEL

MEMORANDUM

SUBJECT: Case Referrals for Civil Litigation

FROM: Michael A. Brown
Acting Enforcement Counsel
Deputy General Counsel

TO: Regional Counsels

A review of our recent enforcement referrals for proposed civil litigation 1/ and conferences with the Department of Justice have revealed that certain points relating to case development and litigation activities must again be emphasized and some new "ground rules" should be set forth. This memorandum is intended to supplement the General Operating Procedures memorandum governing EPA's enforcement activity which was issued on July 6, 1982.

Quality of Referrals

I want to stress that a case should not be forwarded to Headquarters for referral to DOJ unless you fully intend that the case should be filed. Sending a case forward merely to get credit for the case is a waste of your time and ours. We want to concentrate on properly developed cases that will actually be filed, not merely paper to be referred to DOJ that results in no action. In addition, referrals to Headquarters and DOJ for the purpose of applying pressure on a party to settle should not be made unless the Regional Office is willing to carry the case through a suit.

My review of the past numbers of referrals by EPA to DOJ compared to the actual number of cases that are filed reveals that past practices resulted in a considerable disparity between the two numbers. You, and especially the Regional Administrator, should be prepared to support a case that is referred to Headquarters all the way through trial.

1/ This memorandum applies only to referrals for civil litigation. Guidance for referral of cases for criminal proceedings will be addressed in a subsequent memorandum.

Case Development Process

We expect that DOJ and Headquarters' involvement in the case development process will continue to be intensive in hazardous waste and Superfund cases in the future. This is because these are new areas of the law, without much precedent. In the more mature areas (air and water cases) we expect the case development process to be more informal. For example, in many cases the coordination between Headquarters, DOJ attorneys and Regional attorneys may be accomplished by infrequent meetings and telephone contacts.

The need for Headquarters Enforcement Counsel or DOJ involvement in a case at an early stage depends upon sound judgment. If the case, even though in a mature program, presents national issues, contains novel problems, requires extra support, or has other areas in which you or your attorneys would like support from or the views of Headquarters, the Department of Justice or both, we will provide it. However, we do not want to make the case development process a burden on the Regions in air and water cases which do not require it.

It is essential that Regional attorneys apprise Headquarters and DOJ counsel of new cases which are under development as soon as sufficient information is acquired about the cases to enable a determination to be made that they have potential for referral. This is necessary in order that the Regions, Headquarters and DOJ can plan resource needs, litigation support and budgetary requests. We anticipate that increased use of our computer system by the Regional Offices will aid in the advance notification of emerging cases.

Referral Package

As the case development process, including early DOJ involvement, becomes widespread, we will be able to significantly reduce the supporting paperwork you send to EPA Headquarters to accompany a referred case. In order to achieve this result, it is highly desirable for the Regional attorney to acquaint the appropriate Headquarters and DOJ attorneys with developing cases by telephone and at regional meetings at an early stage. In any event, as described in the following paragraph, certain basic information in the form of a referral memorandum should accompany the litigation report at the time the case is formally referred to Headquarters, in addition to the more comprehensive litigation report.

When a case is forwarded to Headquarters for referral to DOJ, the referral memorandum, at a minimum, should include identification of the potential defendants, a factual summary, identification of issues, status of past Agency enforcement efforts, and the names of Agency and DOJ attorneys who are involved in the case, including the lead attorney. This should be accompanied by the litigation report, together with a copy of the relevant papers in the case file and such other accompanying explanatory memoranda or analyses as have been agreed to between the Regional attorney, the Headquarters attorney and the DOJ attorney working on the case.

One particular need in a case referral is to identify the problems that may exist with the case. In the past many documents forwarding cases to EPA Headquarters have been pure advocacy documents. By this I mean they stressed only the positive side of a case. However, once the case was referred to DOJ and work began, problems that might complicate the prosecution of the case would then be revealed. In order to properly focus your resources and ours, it is necessary that initial forwarding paperwork include a description of all problems that may accompany the prosecution of the case. Further, if problems are identified after the case has been forwarded to Headquarters, the referral paperwork should be supplemented to include these problems. Early involvement by Headquarters, and DOJ where appropriate, should provide for early identification and resolution of such problems. Your credibility with Headquarters and EPA's credibility with DOJ are not aided by selling a case that must be "unsold" when reality sets in.

Lead Attorney

The lead attorney responsibility establishes an accountable party for the progress of the case. It has become apparent that many times the failure of a case to move forward is a direct result of the lack of an identifiable lead attorney who bears the responsibility for the progress of that case. Responsibility cannot be vaguely shared between two or three attorneys. Someone has to have the lead designation if for no other reason than to act as a focal point, prescribe milestones, and make appropriate reports.

At such time as you begin the case development process there should be a clear understanding between the Agency attorneys about who will take the lead in the case development phase. Ordinarily the lead attorney in the development phase will be a Regional attorney. However, in cases of national significance or cases without precedent, the lead attorney, even in the development phase, may be an attorney from Headquarters or DOJ. After the case has been referred to DOJ, there should again be a conference between the appropriate Regional, Headquarters and DOJ attorneys to determine if the lead in the case should shift. If so, the new lead attorney should be designated and his/her identity clearly understood by all parties to the case, including technical support personnel. When the case is filed, the lead responsibility should again be agreed to by the attorneys and conveyed to all other parties involved in prosecuting the case. At all times, the computer system should be kept current on the identity of the lead attorney.

Regardless of who has the lead, the responsibility for the initial documentation of statutory violations and development of supporting data that justifies referral of a case to DOJ for litigation always rests with EPA attorneys. In addition, I expect that EPA attorneys will be responsible for developing and maintaining a thorough understanding of the facts of the case, the issues involved or which may be raised, Agency policies which affect or may be affected by the case, and to serve as spokesperson on the case development and litigation team for EPA's views.

When a case is referred to the Department of Justice, the Department will, in consultation with EPA, and in accordance with the Memorandum of Understanding between the agencies, designate a lead case attorney. The DOJ lead attorney will be responsible for and have authority to require development of case strategy and tactics; evaluate the quality and quantity of evidence necessary to prove the government's case; assign and coordinate responsibilities to litigation team members, including technical personnel; and insure that all necessary government personnel are fully informed of case progress. The lead attorney will also communicate as the government's spokesperson with defendants; and undertake the necessary case preparation to move the matter expeditiously to trial.

Generally, the lead attorney after referral of a case will be from the Department of Justice or United States Attorneys Office. This is consistent with the Attorney General's statutory responsibility for litigation involving the United States and its Agencies and the Memorandum of Understanding. On a case by case basis EPA attorneys may be assigned lead responsibility. When this occurs, the EPA attorney assigned lead responsibility will be supervised by the Chief of the Environmental Enforcement Section of the DOJ with respect to litigation matters.

It is essential that all litigation team members understand their respective responsibilities and cooperate in the litigation effort. Experience demonstrates that cases which are actively moved to trial provide a full opportunity for each attorney to gain meaningful experience in litigation. Without this support our litigation effort cannot succeed.

The computer system should at all times reflect the identity of the lead case attorney. In each case, EPA will designate an EPA attorney who will continue to be responsible for coordinating agency input.

Further Clarification

I realize that this guidance does not prescribe exact procedures for every conceivable situation. However, I am looking to you as Regional Counsels to exercise your best professional judgment in supervising your Regional attorneys. Please let me know in those instances where attorneys from Headquarters and the Regional attorneys are unable to reach agreement on the handling of cases. Further, the Headquarters Associate Enforcement Counsel and I stand ready to help you in any dealings with DOJ, if necessary.

Goal

I want to emphasize that the goal of EPA is for expeditious, efficient, and successful prosecution of our enforcement cases. It does not matter who gets the credit or the lead; what does matter is whether the cases are worth the time of all the parties involved, are filed and prosecuted in a timely manner, and achieve protection for the public and the environment.

cc: Robert M. Perry
Steve Ramsey
Associate Enforcement Counsels

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OFFICE OF ENFORCEMENT

CIVIL PENALTY POLICY

JULY 8, 1980

For application of Section 309(d) of the Clean Water
Act and Section 113(b) of the Clean Air Act to
Certain Water Act Violators and Air Act
Stationary Source Violators

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I. Preamble

The objective of this civil penalty policy is to assist in accomplishing the goals of environmental laws by deterring violations and encouraging voluntary compliance.

The elements of the policy reflect years of experience by federal, state and local enforcement officials, adapted to present conditions and needs. The policy has had the benefit of much informed comment in meetings of federal, state, and local officials in every region, in written comments, and in a working group of federal and state enforcement officials.

The policy is based upon the main themes of the Clean Air and Water Acts, in which Congress required all citizens, private firms and public bodies to join in a common effort to restore and maintain the quality of the nation's air and waters, and to do so consistently in all parts of the country, in accordance with statutorily mandated time schedules. The theme of national consistency has been reinforced by the Clean Air Act Amendments of 1977, which directed the Administrator of the Environmental Protection Agency to promulgate regulations designed to assure fairness and uniformity in implementing and enforcing the Act by the EPA Regional Offices and the states (Clean Air Act, Section 301).

The national response to the Air and Water Acts is encouraging. The overwhelming majority of citizens, private firms and public bodies have met the deadlines and complied with what was required of them. A minority have not. This penalty policy will keep faith with those who joined the common effort. It will help maintain the voluntary compliance on which achievement of our environmental goals depends.

The Clean Air and Water Acts authorize civil penalties up to stated maximums. This policy enunciates general principles for determining appropriate penalties that the government will seek in individual cases. It is based primarily on four considerations--the harm done to public health or the environment; the economic benefit gained by the violator; the degree of recalcitrance of the violator; and any unusual or extraordinary enforcement costs thrust upon the public. The policy recognizes appropriate mitigating circumstances or factors. Each of these penalty considerations and each of the mitigating factors is well founded in law and is consistent with statutory requirements.

While fulfilling its primary objective to deter violations and encourage compliance, this policy has very significant additional justifications and benefits as well:

A. The policy is fair:

  1. in an ethical sense, because it will assure that violators of the law do not economically benefit from their violation,

  2. in an economic sense, because it will assure that violators do not gain an economic advantage over others who incurred costs to obey the law, and

  3. in a geographic sense, for it will assure that no area of the country can offer lenient enforcement as an advantage to its industries or a lure to the industries of other areas.

B. The policy seeks to improve the operation of the market sector of our economy by more fully imposing onto polluting firms costs otherwise thrust upon the public. By internalizing more of the social costs of producing goods or services, it makes prices of goods or services better reflect the resources used in their production, and allows the market system to better allocate resources.

C. The policy seeks to compensate the public for harm done to public health or the environment, or for unusual or extraordinary enforcement expenses.

D. The policy seeks to make efficient use of government resources by removing economic incentives to violate environmental laws, thus maintaining high voluntary compliance rates. Because there are hundreds of thousands of pollution sources, even a small decline in compliance rates brings major new requirements for enforcement resources.

Because this policy is to be used by many federal, state and local enforcement officials throughout the country, it has been drafted in general form. It is a policy for determining what civil penalties the government will seek when civil actions are taken, not a policy to determine which enforcement actions should be taken. Enforcement strategy or priorities are determined elsewhere, not by this policy.

II. Statutory Basis for Civil Penalty under Water and Air Acts

Civil penalties are provided for in Section 309(b) of the Clean Water Act, which subjects violators to civil penalties of up to $10,000 per day of such violation. The Water Act has no further statutory criteria for determining the precise amount of the penalty, leaving that to be determined by the court. Authority for such civil penalties has been in the Act since its passage in 1972.

Since 113(b)of the Clean Air Act provides for civil penalties of up to $25,000 per day of violation and requires courts to "take into consideration (in addition to other factors) the size of the business, the economic impact of the penalty on the business and the seriousness of the violation." The authority for civil penalties was added by the Amendments of 1977. There was no authority for civil penalties in the Air Act prior to these amendments, at least for violations such as the ones within the scope of this policy.

In addition to adding civil penalty authority in Section 113, the Clean Air Act Amendments of 1977 also established, in Section 120, mandatory administratively imposed, noncompliance penalties.

Regulations implementing Section 120 noncompliance penalties have now been promulgated. Such noncompliance penalties are not covered by this civil penalty policy, and nothing stated in this policy should be taken to refer to them in any way, except that provision has been made in this civil penalty to avoid duplication of penalties based upon the economic benefit of delayed compliance[1] during the same time period (see discussion in part X below.)[1]

III. Types of Violations to Which Policy Applies

The civil penalty policy is to be used by federal, state and local officials in enforcement actions involving certain violations of the Clean Air Act, as amended, and certain violations of the Clean Water Act, as amended.

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[1] The preamble to EPA's final noncompliance penalty regulations provides that no notices of noncompliance will be issued, or penalties assessed, prior to January 1, 1981. For purposes of determining an appropriate civil penalty, EPA will only calculate the economic benefit of delayed compliance prior to this date.

The policy applies to major and minor water pollution sources which violate those requirements of the Water Act made subject to civil penalties by Section 309(d),[2] and to major and minor stationary air pollution sources which violated those requirements of the Clean Air Act made subject to civil penalties by Section 113(b).[3]

The application of this civil penalty policy to situations in which full compliance is required prior to operation (as, e.g., under the New Source Performance Standards under Section 111 of the Clean Air Act) should not be interpreted as suggesting that noncompliance can be tolerated if penalties are paid.

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1 cont.

With respect to any emission limitation or other requirement approved or promulgated by the Administrator after August 7, 1977, which is either more stringent than those in effect at that time or which establishes a requirement where none existed before, Section 120(g) of the Act provides that the effective date for noncompliance penalties will be the date that full compliance is required with such limitation or requirement (though not later than three years from such approval or promulgation, nor earlier than the effective date that noncompliance penalties begin with respect to violations of existing limitations).

[2] i.e., violators of effluent limitations under Section 301 of the Clean Water Act; water quality related effluent limitations under Section 302; national standards of performance under Section 306; toxic and pretreatment standards under Section 307; monitoring under Section 308; aquaculture under Section 310; disposal of sewage sludge under Section 405; violators of permit conditions or limitations under Section 402 and 404; and violators of orders issued under Section 309(a).

[3] i.e., violators of an administrative order issued under Section 113(a) of the Clean Air Act; a state implementation plan requirement approved under Section 110; a New Source Performance Standard under section 111; National Emission Standards for Hazardous Air Pollutants under Section 112; a compliance date extension issued to a source converting to coal under 119(g) (as in effect prior to August 7, 1977); a delayed compliance order issued to a source converting to coal under 113(d)(5); a nonferrous smelter order under Section 119; certain requirements relating to monitoring under Section 114; a requirement imposed in a delayed compliance order under Section 113(d); and attempts to construct or modify a major stationary source in any area for which the Administrator has found, under Section 113(a)(5), that the state is not acting in compliance with applicable requirements for issuance of permits to construct or modify sources in nonattainment areas.

This policy applies to past and future violations of the above-mentioned requirements of the Clean Air and Water Acts where the violation results from the source's failure to make capital or operation and maintenance expenditures necessary to bring itself into initial compliance with the requirements (e.g., failure to install equipment, buy and use complying fuel, carry out a process change, etc.).

The policy does not apply to violations following initial compliance or to violations of an intermittent or transient kind, such as spills, violations of emission or discharge limits through accidents or when attributable solely to the failure to adequately operate or maintain pollution control equipment. Civil penalties are probably desirable in most actions against such violations, but the appropriate amount of such penalties is not set by this policy.

This policy does not apply, of course, to penalties for criminal violations, nor for violations of court decrees. In most cases that are settled, it will be desirable to include stipulated contempt penalty amounts in the consent decree. Such amounts are not subject to the civil penalty statutory limits and are not covered by this policy.

While this policy has been limited at this time to circumstances where its application is clearly appropriate, experience will undoubtedly indicate other circumstances to which it should be extended. Such situations will be considered on a case-by-case basis. Penalties appropriate for other violations under the Clean Air and Water Acts, and under other Acts, will be the subject of future guidance.

IV. Use of the Penalty Policy in Enforcement Actions

This civil penalty policy is intended to be used by federal and state enforcement officials and, in appropriate cases, by local officials (e.g., local air pollution control agencies operating under authority of state air pollution laws). It is to be used in civil actions in state and federal courts, and in state and local administrative proceedings.

Enforcement actions must seek both expeditious compliance and adequate civil penalties. The penalties to be sought in accordance with this policy are in no way a substitute for compliance nor do they preclude injunctive relief or other non-duplicative remedies.

The goal of an enforcement action where this policy applies is both compliance (including interim controls) and appropriate penalties. Compliance and penalties should not be in any way traded off against each other. [redacted] mandatory, and whereas details of technology or schedules may differ, enforcement officials should not bargain for compliance (or interim controls) by offering any reduction in penalties.

Even in the period before the statutory deadlines, the Clean Water and Air Acts required compliance immediately or as expeditiously as practicable. After the deadline has passed, it is even more urgent that violators be brought quickly into compliance.

The penalty policy, moreover, already is structured to provide a strong economic incentive for rapid compliance, for the more rapid the compliance the lower the penalties under this policy. Such an effect is automatically built into the method of calculating the economic benefit of delayed compliance, for one of the major factors of the formula is the length of the period of noncompliance. The penalty factors of harm to the environment and recalcitrance of the violator may also lead to penalty reductions as the speed of compliance increases. In the case of major source violators of the Air Act, moreover, the requirement of mandatory, administratively assessed noncompliance penalties adds additional economic incentive for rapid compliance.

[redacted] penalties are [redacted] and intended to deter violations and encourage [redacted] Penalties are not effluent or discharge fees. Payment of penalties does not give any right or privilege to continue operation in violation of law or to slow down compliance.

When civil enforcement actions are brought in courts, the question of penalties will arise in three contexts--filing the civil complaint, determining the minimum amount acceptable in settlement, and presenting argument to the court (and possibly affidavits or testimony, as well) for its consideration in setting penalties at trial.

The Agency is prepared to settle enforcement actions brought under this policy. Where settlement is not possible, the Agency is obviously free to claim penalty amounts up to the statutory maximum, which will generally be the amount claimed in the complaint.

The methodology of this penalty policy will be used to determine a "minimum civil penalty" which would typically be presented to the court as an appropriate penalty to be imposed.

In addition, the methodology will be used to determine a lower "minimum civil penalty acceptable for settlement" (set out in Part VI) to be used for settlement negotiations.

This policy will allow enforcement officials to arrive at fair, consistent and rationally based penalty sums while providing a lower minimum figure as an encouragement to settlement if enforcement officials believe that settlement is desirable.

By providing them with a minimum settlement figure, this policy gives the enforcement officials responsible for the action a range in which to exercise their discretion to settle or not to settle (i.e., between the statutory maximum and the minimum sum acceptable in settlement as determined by this policy).

Where the state or local administrative bodies are taking enforcement actions and have authority to administratively impose civil penalties, the minimum penalty figure determined for settlement purposes in civil actions should also serve as the minimum to be imposed in the administrative action. The administrative body, however, will want to consider its statutory maximum penalty authority and the minimum civil penalty and will probably want to impose penalties above the settlement amount. This is particularly the case since the administrative body will probably have already decided the case regarding the violation, and reductions for settlement will no longer be relevant.

V. Determining the Amount of the Statutory Maximum Penalty and of the Minimum Civil Penalty

The minimum civil penalty should be determined by the factors and method set out below. The civil penalty so determined will, in most cases, be lower than the statutory maximum sum. Where the civil penalty sum so determined is higher, this information may be used in settlement negotiations or litigation but the statutory maximum is, of course, all that may be requested by the government or imposed by the court.

The amount of the minimum civil penalty should be determined as follows:

Step 1 - Factors Comprising Penalty

Determine and add together the appropriate sums for each of the four factors or elements of this policy, namely:

the sum appropriate to redress the harm or risk of harm to public health or the environment,

[redacted],

the sum appropriate as a penalty for the violator's degree of recalcitrance, defiance, or indifference to requirements of the law, and

the sum appropriate to recover unusual or extraordinary enforcement costs thrust upon the public.

Step 2 - Reductions for Mitigating Factors

Determine and add together sums appropriate as reductions for mitigating factors, of which the most typical are the following:

the sum, if any, appropriate to reflect any part of the noncompliance attributable to the government itself,

the sum appropriate to reflect any part of the noncompliance caused by factors completely beyond the violator's control (floods, fires, etc.).

Step 3 - Summing of Penalty Factors and Mitigating Reductions

Subtract the total reductions of Step 2 from the total penalty of Step 1. The result is the minimum civil penalty. If no settlement can be reached with the defendant, this sum would typically be presented to the court as an appropriate penalty to be imposed.

In some unusual cases, the penalty amount determined in this manner may be larger than the violator can reasonably be expected to pay while bringing itself expeditiously into compliance and continuing to do business. In such cases, enforcement officials may recommend that the penalty be postponed or forgiven in part or in total.

VI. Determining the Minimum Penalty Acceptable for Settlement

Many cases may, of course, be settled prior to trial and result in consent decrees or orders, rather than being litigated to conclusion. The objectives of the enforcement action are still the same, however -- full and expeditious compliance (including interim controls), and penalties. In cases in which enforcement officials think settlement is appropriate, they may, as an encouragement to settlement, reduce the penalty below the lesser of the statutory maximum and the sum determined to be the minimum civil penalty. This reduction, however, may not be greater than the percentage which reflects the likelihood of being unable to establish the violation or violations.

Example:

Assume statutory maximum penalty = $5,000,000

(200 days of violation @ $25,000/day)

Assume minimum civil penalty = $2,000,000

Assume estimate of government's chance of proving violation at trial = 80% (or, chance of being unable to prove violation = 20%)

The maximum reduction permitted for settlement is, therefore, $400,000 (20% X $2,000,000)

The minimum civil penalty acceptable for settlement is, therefore, $1,600,000 (80% X $2,000,000 or $2,000,000 - $400,000) (i.e., range for settlement negotiation = $5,000,000 to $1,600,000)

It is assumed that enforcement actions will not be taken, unless the evidence of violation is strong; therefore, in most, cases, the percentage of reduction should not be large--probably, not more than 25%. Unusual circumstances may, however, exist, where larger reductions are appropriate.

It is not required, of course, that enforcement officials handling an enforcement action reduce the penalty for settlement, or that they reduce it in any given amount. Defendants who settle quickly will undoubtedly stand better chances of receiving such reductions than those who do not.

It should be noted, moreover, that the reduction relates only to the degree of uncertainty of proving that the violation or violations resulted from the source's failure to make capital or operation and maintenance expenditures necessary to bring itself into initial compliance. It does not relate to uncertainty as to the court's decision on compliance schedules and penalties. Enforcement officials should carefully and thoroughly prepare the facts and reasoning supporting their penalty request, and should not be reluctant to present these arguments to the court. Judges are accustomed to deciding such matters, and will make better decisons after receiving well-reasoned recommendations based on fair principles consistently applied.

There may be extraordinary instances where the minimum settlement penalty amount is more than the violator is able to pay. In such cases, it may be appropriate to agree to a postponement of the penalty or payment over time, or, in an extreme case, to a further reduction of the penalty. Further guidance on handling these extraordinary instances is set out below.

VII. Explanation of Factors Considered in Determining Minimum Amount of Civil Penalty

A. Harm or Risk of Harm to Health or the Environment

The extent that the violation harms or poses risks of harm to public health or the environment must be carefully considered in setting the appropriate penalty, for violations which involve such harm or risk are certainly very serious. For example, a violation involving discharges of toxic chemicals into waters which enter or threaten to enter public drinking water supplies certainly causes or threatens serious harm to public health. It may also destroy or threaten valuable fishing or recreational resources.

Similarly, a violating air pollution source in an area which has not attained the primary (i.e., health protective) ambient air standard is contributing to a health hazard or is actually causing harm to residents of the area.

All pollutants introduced into the environment create some harm or risk, of course, and it will be difficult in many cases to precisely quantify the harm or risk caused by the violation in question. The penalty amount attributable to such public harm or risk will have to be determined on the facts of each specific case.

Estimated costs of environmental restoration may be useful in quantifying harm to the public, and traditional personal injury damage concepts may be helpful in quantifying injuries to public health. It may also be possible to use the recreational values developed by various public agencies to assist in quantifying environmental harm.

B. Economic Benefit of Delayed Compliance

Violations which are the subject of this policy usually consist of a failure to install and operate required pollution control equipment within time limits set by law, or a failure to utilize fuels or raw materials with lower pollutant content.

Delaying the purchase and operation of pollution control equipment results in economic savings or gains to the owner or operator of a facility. These savings or gains arise from two distinct sources:

> the opportunity to invest the capital funds not spent to purchase and install pollution control equipment during the period of noncompliance, and
>
> the avoidance of the operation and maintenance expenses associated with the pollution control equipment during the period of delayed compliance (labor, materials, energy, etc.). These costs avoided represent a permanent savings to the owner or operator; they may, of course, also be invested in income-producing ways.

The economic benefits attributable to delaying capital expenditures and avoiding operation and maintenance expenses have been combined in a single formula. Because these benefits occur over a period of time, both past and future in some cases, the formula reduces these benefits to a present dollar value by standard accounting methods, and also takes into account tax effects, and other appropriate economic factors. The formula is further described in a technical support document dated September 27, 1978, subject: Computation of Economic Benefit of Delayed Compliance under Civil Penalty Policy. The formula described in that memorandum should be utilized in calculating economic benefit for the purpose of arriving at appropriate penalty amounts. It is recognized, however, that there may be unusual circumstances in which a different method of measuring economic benefit may be appropriate. The acceptability of any such method will have to be determined on a case-by-case basis.

C. Violator's Recalcitrance, Defiance, or Indifference to the Requirements of the Law

Good faith efforts to obey the law are expected of all subject to its jurisdiction. Except as provided below in Sections E and F (pp. 13 and 14) assertions of "good faith" should not be considered as a basis for reducing the otherwise appropriate penalty. Courts traditionally consider the degree of the violator's recalcitrance, defiance, purposeful delay or indifference to its legal obligations in setting penalties. Enforcement officials should do so also, and should not hesitate to include a sum in the civil penalty to reflect such factors where they exist.

Care should be exercised, however, not to seek to add such an element of penalty on a person, firm, or entity for exercising, without purpose of delay, its lawful rights to challenge agency determinations in administrative or court proceedings. A violator which has complied with all requirements that were not disputed while challenging the rest has not been, on these grounds alone, recalcitrant, defiant or indifferent. Such a violator is on a different footing from one which used a challenge of one aspect of its compliance requirement to delay all compliance, or which made frivolous challenges for purposes of delay. This latter mode of behavior may indeed constitute recalcitrance, defiance, or indifference so as to justify adding an element of penalty.

If a violator, in good faith, did challenge agency determinations without purpose of delay, but did not prevail, and by virtue of the litigation has missed a deadline, or otherwise failed to comply, it is nevertheless in violation, and subject to the civil penalty factors other than the one related to the recalcitrance, defiance, or indifference of the violator -- i.e., harm or risk to public health or the environment, economic benefit of delayed compliance, and extraordinary enforcement costs. When a source decides to challenge an agency requirement, it assumes the risks of not prevailing in its challenge. Violators "litigate on their own time." U.S. Steel v. Train, 556 2d 822, (7th Cir. 1977).

D. Extraordinary Costs of Enforcement Action

Although attorney's fees and court costs cannot be recovered by the federal government in civil enforcement actions, there are situations when it is appropriate to consider unusual expenses incurred in detecting the violation, defining its extent, and in bringing the enforcement action.

Where, for example, a source has disregarded its obligation to identify its own pollutant discharges and apply for a permit, and the government, as a result, must undertake such work, the government's costs in identifying the discharges may be included in the amount sought. Or, for example, where the violator's sampling and analytical procedures are so deficient that the government must conduct significant sampling on its own to confirm discharge levels, the expense of such sampling may be added to the sum of civil penalties sought. Those costs which are routinely incurred by state and federal enforcement officials need not, however, be sought as part of a civil penalty.

E. Mitigation for Noncompliance Caused by the Government Itself

When failure to comply or compliance delay was caused by, requested by, or attributable to the government, civil penalties are not appropriate. When the failure to delay was partially caused by the government, the penalties may be reduced in proportion to the relative share of government responsibility or in proportion to the period of delay caused by the government. It is expected that mitigation on this basis will only be permitted when the government was clearly responsible for the delay, as, for example, it may have been in a small number of cases under the Water Act. In these instances, a discharger challenged conditions of an NPDES permit, requested an adjudicatory hearing, prosecuted its request expeditiously and in good faith, and may have been delayed by the Agency's lack of resources to provide prompt hearings for all those who challenged their permits.

States and the federal government are not bound by the acts of the other, but they will, of course, want to be informed of and consider carefully the acts of the other in connection with penalty decisions.

F. Mitigation for Impossibility

Where delayed compliance was, in fact, attributable to causes absolutely beyond the control of the violator (such as floods, fires, and other acts of nature) and was not due to fault or negligence, a civil penalty is not required--even in instances where as a result of the impossibility the violator has enjoyed an economic benefit. If only a portion of the period of delayed compliance is attributable to such factors beyond the violator's control, a civil penalty should be sought only for that period of noncompliance that was not attributable to such factors.

G. Other Bases for Mitigation

There may also be other unforeseeable mitigation circumstances because of which all or a part of the otherwise appropriate civil penalty should not be sought, as, for example, when it was not technically possible to comply. Acceptability of such a situation as a mitigating circumstance will have to be considered on a case-by-case basis, keeping in mind also the "technology forcing" aspects of the laws. Another instance in which all or part of an otherwise appropriate civil penalty might not be sought would be where emergency needs require that sources be operated even though they fail to comply with discharge or emission limitations. Obviously, situations involving unusual mitigating circumstances must be looked at individually since the full range of such circumstances cannot be predicted.

Since the Water Act and the Air Act impose absolute duties of compliance, requiring sources to take whatever measures are possible to come into compliance by the legally established dates, the burden is clearly upon the violator to establish a compelling reason why a civil penalty should be mitigated. This burden should only be considered satisfied where urgent efforts are made to comply but actual impossibility or government conduct alone precluded compliance, or where a similar mitigating circumstance caused the delay. Only in these instances have violators really made what should be considered a "good faith" effort that excuses noncompliance. All dischargers must be held to a standard that requires careful and diligent planning and an urgent, serious effort to come into compliance in a timely manner.

H. Specified Clean Air Act Factors

The civil penalty policy factors described above include consideration of the three factors specified in Section 113 of the Clean Air Act. The "size of the business" is reflected in the economic benefit of delayed compliance since less expensive control equipment is typically required for smaller businesses and the benefit of delaying installation of such equipment is correspondingly less. The "economic impact of the penalty on the business" is considered by the penalty deferral or reduction that is allowable where violators lack the ability to immediately pay the full amount of the penalty (see section IX below). The third factor, the "seriousness of the violation," is taken into account by looking at the harm done to public health and the environment (violations may, though, be considered as serious, even though they do no measurable or quantifiable harm to the environment) and the violator's recalcitrance, defiance or indifference to the requirments of the law.

VIII. Approved Environmentally Beneficial Expenditures In Lieu of Payment of Penalty Sum to State or Federal Treasury (i.e., "Credits Against Penalty")

A. Use of Credit to Satisfy or Offset Penalty

Occasions have arisen in enforcement actions where violators have offered to make expenditures for environmentally beneficial purposes above and beyond expenditures made to comply with all existing legal requirements, in lieu of paying penalties to the treasury of the enforcing government. Courts have sometimes accepted such payments, and in some circumstances such arrangements are acceptable under this penalty policy. For ease of reference (but without characterizing them for any other legal purposes--e.g., tax deductibility) such alternative ways for a violator to satisfy the penalty instead of paying the penalty sum to the federal, state, or local treasury are referred to herein as "credits" against the penalty.

Examples of possible credits against a penalty might be:

(1) construction and operation of approved pollution control equipment in addition to that required for compliance with existing requirements which will achieve a significant further increment of environmental benefit above all present requirements of federal, state or local law.

(2) financial contributions to a private or governmental body or agency for environmentally approved uses--e.g., restoring fish and wildlife resources, carrying out environmental studies or research of a high priority need, improving the ability of citizen or public interest groups to monitor and assist in enforcing the law. Credits, however, will not be given for expenditures that would properly be required as part of equitable relief being sought for the violations, such as cleaning up the pollution, restoring the areas affected, or reimbursing the government's costs of doing so, unless these costs have been included in the penalty sum. In all events, the financial contributions must be acceptable to the enforcing agency. Credits for high priority research are desirable, but the research must be closely scrutinized to insure it is beneficial from the point of view of the enforcing agency, not merely from the point of view of the violator.

B. Criteria for Acceptable Credits

In determining whether a proposed expenditure is creditable against the penalty, the following criteria must be satisfied:

(1) The penalty sum itself will generally be stated in the order, decree or judgment as determined, before any credits are allowed, and this amount should be clearly identified as a penalty.

(2) The expenditure proposed for credit must be approved by enforcement officials in advance of the entry of the decree, order, or judgment in the case, must be clearly delineated therein, and must be enforceable along with other elements of the decree, e.g., subject to stipulated contempt penalties or to the court's continued contempt authority for the full length of time over which expenditures are to be made.

(3) The item to be acquired by additional expenditure for which credit is given must be described with sufficient precision to bind the violator to the agreed expenditure level. Where the credit is for the construction and operation of additional pollution control equipment that will bring about a greater degree of control than that required by law (and a considerably reduced discharge or emission level) an agreement should be obtained from the violator that it will treat the reduced discharge or emission, in all respects, as a requirement of law for the period that it has agreed to operate such equipment.

(4) The proposed expenditure must be clearly for environmental benefits above and beyond the requirements of law. Interim controls and expeditious compliance are required by law (not just waiting for the last day before the statutory deadline) and are not appropriate for credit.

(5) Environmental laws require compliance at all times. Good engineering practice, therefore, includes design of pollution control systems with sufficient capacity and reliability to provide a margin of safety to ensure such continuous compliance. Expenditures for this margin of safety are to assure compliance with the requirements of law and are not eligible for credits.

(6) If in accomplishing the required level of pollution control, the violator necessarily will accomplish a higher level of control, there can be no credit for such incidental benefit. (e.g., to accomplish 80% removal of a pollutant, the violator must necessarily purchase and operate equipment which removes 85% of the pollutant.)

(7) Studies or research and development which are necessary parts of compliance with legal requirements are not eligible for credits (e.g., studies assessing the feasibility and costs of alternative methods of compliance or prototype research and development). Research and development work eligible for credit should be work from which the public in general can benefit. To insure this, the following measures should be required:

(a) the enforcing agency should insure that adequate reporting procedures are required. These procedures should include an initial research and development plan, periodic progress reports, and a comprehensive final report that documents startup and the first year of operations if a facility was involved;

(b) the enforcement agency or its contractors should be given the right to obtain first hand information about the work by inspecting all documents associated with it and by making on-site inspections; and

(c) the source should agree that all domestic patents, design rights and trade secrets that result from the work will be placed in the public domain.

In most instances the research and development should be related to the violation, but other instances can be considered on a case-by-case basis. As stated above, credits for research or studies will be closely scrutinized.

(9) Expenditures accepted for credit may only be expenditures that the violator agrees it may not later use (or sell to anyone else to be used) as a credit against any other existing provisions of environmental law (such as emission offset to allow the construction or modification of a major stationary source in an area where national air quality standards are not being satisfied) and the decree must so provide.

C. Constraints on Federal Enforcement Officials With Respect to Payment of Penalties and Use of Credits In Lieu of Penalties

The Air and Water Acts both authorize civil penalties which are payable only to the United States Treasury. State statutes may differ, but most provide for payment of the penalties to the State Treasury.

Civil enforcement actions to enforce the Air or Water Acts whether settled or litigated to conclusion will end in orders, decrees, or judgments of a court. In such actions there are limitations governing the positions to be taken by federal enforcement officials. In settling cases, federal enforcement officials may accept proposals for expenditures as credits against penalties and recite them, as well as the penalty sum, in the proposed consent decree, but it must be kept in mind that such provisions as well as the entire decree are subject to approval by the court.

With respect to credit for proposed contributions to third parties, federal enforcement officials may not agree with defendants as to such payments in lieu of paying the penalty to the United States Treasury, for that prefers a third party as recipient of the payment over the United States, and prefers one third party potential recipient over another.

State and local enforcement officials may or may not be as constrained with respect to proposing contributions to third parties. Accordingly, the appropriateness of state or local government officials proposing credits for contributions to third parties must be governed by their own policies.

D. Discretionary Nature of Credit

Acceptance of a proposed credit is purely discretionary with federal, state, and local enforcement officials. Enforcement officials may, of course, insist on payment of the penalty into the treasury. The statutes provide for penalties. Violators have no "rights" to credits against these penalties.

E. Consideration of After-Tax Effects of Credit Expenditures

The amount of the credit to be given for proposed expenditures is governed by the rule that it must have the same after-tax effect on the violator as payment of the penalty sum would have. Since the penalty sum is immediately payable upon entry of the order, decree or judgment, any proposed credit which includes other than immediate payment of the full sum must be reduced to an equivalent present value by standard accounting methods. Where the expenditure proposed for credit is construction and operation of additional pollution control equipment, the formula for computing economic benefit of delayed compliance (see paragraph VII.B. above) should be used to compute the present value of the credit. It should be noted that this formula assumes that the expenditures will receive normal tax treatment (deductibility or credit against tax) and accounts for that. The present value resulting from use of this formula may, therefore, be used dollar-for-dollar as credit against the penalty.

IX. Penalty Postponement or Forgiveness Based Upon Inability To Pay

In some instances, the indicated appropriate civil penalty may be so severely disproportionate to the resources of the owner or operator of the violating facility that its imposition would cause the owner or operator very serious economic hardship. In such unusual cases, enforcement officials may recommend to the court that it postpone or forgive the otherwise appropriate penalty, in part or in total as circumstances may indicate.

While the appropriate civil penalty amount may be postponed or reduced in such circumstances, no such concession may be made with respect to the cost of coming into compliance. Except as the Air and Water Acts may themselves provide, compliance is required in every case, regardless of cost and regardless of the violator's financial situation.

Clearly the burden is on the violator to establish its inability to pay. This burden can only be satisfied when the violator has produced adequate evidence to establish its financial condition and when the enforcement officials involved have obtained a competent review of the violator's financial condition. Mere statements of inability to pay are not enough, and a violator making such a claim must be willing to make full disclosure of its financial affairs to enforcement officials and the court under circumstances that assure such disclosure is accurate and complete.

If review by persons competent to assess the violator's financial condition and prospects indicates that the violator's resources would not permit it to finance its compliance, and also pay the penalty, then, if adequate interest can be arranged, the penalty may be paid over time.

If even payment over time is not possible, then the penalty may be reduced to an amount commensurate with the resources of the violator (taking into account the cost of compliance).

In making a determination of the violator's ability to pay, it is important to insure that the economic condition of the violator has not been distorted by transactions with parent companies or shareholders or by unusual or unconventional accounting practices. Where such distortion has taken place, parent company and shareholder or other owners' resources should be considered in determining whether or not the violator is able to pay the civil penalty. In all cases, review of financial information by persons competent in financial affairs should be obtained.

X. Time Period for Application of Civil Penalty Policy

In general, this civil penalty policy would appropriately apply to violations of the kinds covered which have occurred since enactment of the Air Act in 1970 and the Water Act in 1972. In determining the penalty sum, both with respect to the statutory maximum and the minimum civil penalty, the period of violation should begin with the earliest provable date of violation and continue until the violator has installed and operated the required equipment, made the required process change, or converted to the complying fuel and thus brought itself into compliance.

Under the Water Act, this general rule will be applied in this civil penalty policy, since authority for civil penalties has existed since 1972. Consequently, the period covered and the noncompliance period commence on the date when the schedule requirements of a National Pollutant Discharge Elimination System (NPDES) permit were violated or on July 1, 1977, (the statutory deadline for best practicable control technology or secondary treatment), whichever is earlier. The period of noncompliance ends when the violator has brought itself into full compliance with statutory (including permit) requirements.

Under the Air Act, there are other considerations which, as a matter of policy, lead to application of a different rule regarding the time period for application of this civil penalty policy. The Air Act has had authority for criminal or civil injunctive relief since 1970, but general authority for civil penalties was not added until the amendments of 1977, which took effect August 7, 1977. Whether, as a matter of law, civil penalties are authorized in civil enforcement actions commenced or amended after August 7, 1977, for violations occurring before August 7, 1977, may be debated, but regardless of that, and without conceding any issue of law, as a decision of policy, this civil penalty policy will be applied by federal enforcement officials only to those violations of the Air Act occurring after August 7, 1977.

Accordingly, under the Air Act, for purposes of computing the statutory maximum penalty, the period of noncompliance will commence with August 7, 1977, or the date of earliest provable violation, whichever is later. For purposes of computing the minimum civil penalty, the period of noncompliance used will also be as stated in the previous sentence, except that when considering the sum to be included for the violator's recalcitrance, defiance, or indifference to its legal obligations, the entire record of the violator should be considered.

When determining a civil penalty under the Air Act a special consideration also applies concerning the end date of the period of noncompliance, but only with respect to the element of the penalty based on removing the economic benefit of delayed compliance.

As indicated earlier, Section 120 of the Air Act requires EPA to assess and collect noncompliance penalties against certain categories of stationary sources. The purpose of these administratively imposed penalties is to recapture the economic value which a delay in compliance may have to the source owner or operator. EPA will not issue any notices of noncompliance or assess and collect any noncompliance penalties prior to January 1, 1981. While the authority to collect noncompliance penalties (Section 120) is independent of and additional to the authority to seek civil penalties (Section 113), federal enforcement officials will not seek double recovery of any portion of the economic value attributable to delayed compliance. Accordingly, when the period of noncompliance will extend beyond January 1, 1981, the economic benefit element of the civil penalty should be based only upon the noncompliance that will have occurred prior to that date.

Sources subject to judicial orders or that have negotiated consent decrees with EPA, will not have their civil penalties recalculated. Additionally, even if a consent decree has not been approved by the court, the amount of the penalty need not be recomputed if it is clear that agreement has been reached on all material terms, including the penalty amount, and among all parties, including EPA where it is a party. In all other settlements, the economic benefit components of the civil penalty will be based upon noncompliance which will occur up to January 1, 1981, or the date for final compliance specified in the consent decree, whichever is earlier. In this way the policy will provide an incentive for expeditious and fair settlements, while honoring the Agency's commitment not to seek double recovery of any portion of the economic benefit element attributable to delayed compliance.

In all other respects, however, in Air Act cases, both when computing the statutory maximum penalty and when determining the minimum civil penalty (or the minimum acceptable for settlement), the period of noncompliance continues until the violator has brought itself into full compliance with the requirements of the law.

Where state or local government civil penalty authority existed prior to August 7, 1977, then that additional authority might, of course, be used by the state to extend the period of noncompliance.

XI. Application of Civil Penalty Policy to Different Types of Sources - Private, Public, Regulated Utilities, etc.

Congress, in enacting the civil penalty provisions of the Air and Water Acts, and in the Air Act's (Section 120) administratively imposed noncompliance penalties, made no exemptions or distinctions for classes or types of violators on the basis of ownership or form of organization. This civil penalty policy seeks to carry out Congress' fair, evenhanded, consistent approach, but recognizes obstacles in a few situations.

A. Privately-Owned or Operated Sources (other than Regulated Utilities)

This penalty policy, as described above, applies in full in civil enforcement actions against privately-owned and operated sources other than regulated utilities. Extraordinary situations, if any, can be handled on a case-by-case basis.

B. Publicly-Owned Utilities and Investor-Owned, Regulated Utilities

Publicly-owned utilities and investor-owned, regulated utilities are to be treated equally.

Penalties will be sought from utilities whose violations come within the scope of this policy. The focus of these penalties will be on deterrence. That is, penalties should be in sufficient amounts to deter future violations. Penalties should include appropriate amounts for environmental harm or risk of harm caused by the source's violations and recalcitrance or indifference of the source to its legal obligations as well as any extraordinary enforcement costs which the government has been forced to pay.

C. State and Municipal Facilities

In enforcement actions against state or municipal facilities, including publicly-owned treatment works, this civil penalty policy applies, except with respect to the penalty element for economic benefit of delayed compliance.

Because state and municipal budgeting and financial decisions are generally concerned with the allocation of tax derived public funds to provision of public services, rather than the sale of goods or services for profit, recovering the economic benefit of delayed compliance is somewhat less applicable. In all such cases, the economic benefit of delayed compliance should be calculated and considered as a guide, but in determining the minimum civil penalty and the minimum civil penalty acceptable for settlement, enforcement officials may recommend that this factor be discounted or eliminated in cases where they think it is appropriate. Because the other elements (harm or risk; recalcitrance; extraordinary enforcement expense) are not always susceptible to precise quantification, the appropriate minimum civil penalty or the minimum civil penalty acceptable in settlement for such facilities can only be determined on a case-by-case basis.

The only further guidance with respect to penalties in such cases is as follows:

1. Enforcement officials should not excuse all civil penalties except in extraordinary situations, for that would create a double standard of more lenient treatment for public agencies than private individuals or firms.

2. Civil penalties for violations by state or municipal facilities should be in sufficient amounts to deter future violations, considering the elements of this penalty policy, size of the facility, and the duration of the violation, and in a municipal case, the size and the resources of the municipality. To achieve a deterrent effect, civil penalties for violations by state or municipal facilities should bear some relationship to the population served by the violating facility and upon which the burden of the penalty will fall.

D. Federal Facilities (Other than Utilities)

Because of recent amendments to the Air Act and the Water Act and the federal mechanism that exists for the payment of penalties, federal facilities present a significantly different problem from other violating sources. Accordingly, guidance as to them will be provided elsewhere.

XII. Federal-State Cooperation in Implementing this Policy

As part of their efforts to enforce air and water pollution laws, many federal, state, and local enforcement officials will be using this penalty policy. To assist in achieving consistency in its application, a method of consultation among federal, state and/or local enforcement officials has been devised to insure that appropriate penalties will be sought in specific cases.

XIII. Effective Date of this Civil Penalty Policy

Many of the factors comprising this penalty policy have been used by federal and state enforcement officials for years. EPA's civil penalty policy has been more fully articulated over the last year.

On June 3, 1977, guidance was provided to EPA regional offices by the Office of Enforcement regarding criteria for settlement of civil penalty aspects of enforcement cases under the Water Act. This guidance included most of the factors now more fully explained in this document, including, for example, recovery of the economic benefit of delayed compliance, harm to the public, and recalcitrance of the violator. EPA's intention to take enforcement action against major source violators of the Water Act and to seek civil penalties, including sums to take away the economic benefit of delayed compliance, was announced at a press conference on June 21, 1977, by Assistant Administrator Thomas C. Jorling.

Further elaboration of this Water Act civil penalty policy was provided by an Office of Enforcement memorandum to EPA regional offices dated June 28, 1977.

The Air Act Amendments became effective on August 7, 1977, including authority for civil penalties, and regions were advised on September 2, 1977 that civil penalties should only be sought for violations occurring or continuing after August 7, 1977.

The first comprehensive version of this consolidated Air and Water Act civil penalty policy was distributed to federal and state enforcement officials on November 23, 1977, and took effect on that date.

In addition to these general communications, this civil penalty policy was explained at meetings and workshops of federal, state, and local officials, at press conferences and other gatherings at Washington, D.C., and in all regions of the country in the last half of 1977 and early 1978. This policy has had the benefit of comments, discussion and analysis over many months.

The civil penalty policy (including its predecessors as explained above) covers all Air and Water Act cases within its scope, as follows:

all Water Act cases not concluded prior to June 3, 1977, and

all Air Act cases not concluded prior to August 7, 1977.

The application to Water Act cases concluded after June 3, 1977 and Air Act cases concluded after August 7, 1977, but prior to the date of this memorandum, is governed by the guidance extant and in effect at the time the case was concluded, including any case-by-case guidance given.

For purposes of this policy, a case was concluded if it is clear that agreement had been reached on all material terms, including penalties, and among all the parties, including EPA where it was a party. Where the agreement had been reduced to writing so as to memorialize its terms, it was clearly concluded. Other situations will have to be individually considered.

Enforcement officials aware of civil enforcement actions which they believe should not be included within the coverage of this policy or its predecessors should present the facts or circumstances for consideration.

XIV. Previous Civil Penalty Policy Superseded

This civil penalty policy supersedes all previous Air Act stationary source and Water Act civil penalty policy, including the following, but only to the extent that such previous policy was inconsistent herewith:

(1) U.S. Environmental Protection Agency, Office of Enforcement guidance letter entitled "Settlement of Section 309(d) Enforcement Cases for Monetary Amounts" dated June 3, 1977, signed by Stanley W. Legro, Assistant Administrator for Enforcement.

(2) U.S. Environmental Protection Agency, Office of Enforcement guidance letter entitled "Settlement of Section 309(d) Enforcement Cases for Monetary Amounts--Policy Background" dated June 28, 1977 signed by Stanley W. Legro, Assistant Administrator for Enforcement.

(3) U.S. Environmental Protection Agency, Office of Enforcement guidance letter entitled "Civil Penalties under Section 113(b) of the Clean Air Act Amendments of 1977," dated September 2, 1977, signed by Richard D. Wilson, Acting Assistant Administrator for Enforcement.

Jeffrey G. Miller
Acting Assistant Administrator for Enforcement
U.S. Environmental Protection Agency

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

[illegible]

OFFICE OF
ENFORCEMENT AND
COMPLIANCE MONITORING

MEMORANDUM

SUBJECT: New Civil Penalty Policy

FROM: Courtney M. Price
Assistant Administrator for Enforcement and Compliance Monitoring

TO: Associate Administrators
Assistant Administrators
General Counsel
Inspector General
Regional Administrators
Staff Office Directors

Attached is the Agency's new civil penalty policy. This new penalty policy will establish a consistent Agency-wide approach to the assessment of civil penalties while allowing substantial flexibility for individual cases within certain guidelines. It is designed to promote the goals of deterrence, fair and equitable treatment of the regulated community and swift resolution of environmental problems. No attempt is made to address issues specific to each statute the Agency administers. Instead, this will be left to guidance developed by each program.

The policy consists of two documents: Policy on Civil Penalties and A Framework for Statute-Specific Approaches to Penalty Assessments. The first document focuses on the general philosophy behind the penalty policy. The Framework provides guidance to each program on how to develop medium-specific penalty policies.

The new penalty policy will not be truly effective until the medium-specific penalty policies are completed. Thus it is important that work begin on the medium-specific policies as soon as possible. I am therefore requesting that each program office meet with their counterparts in OECM and develop workplans for the development of these policies. Please submit those workplans to me by March 31, 1984. The Deputy Administrator has requested that we add the workplans to the Action Tracking System as we receive them. If you have any questions regarding this memorandum or the new civil penalty policy, please contact Jonathan Libber of the Office of Legal and Enforcement Policy. He may be reached at 426-7503.

Attachment

cc: Enforcement Policy Workgroup Members
Associate Enforcement Counsels
OECM Office Directors

POLICY ON CIVIL PENALTIES

EPA GENERAL ENFORCEMENT POLICY #GM - 21

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY

EFFECTIVE DATE: FEB 16 1984

Introduction

This document, Policy on Civil Penalties, establishes a single set of goals for penalty assessment in EPA administrative and judicial enforcement actions. These goals - deterrence, fair and equitable treatment of the regulated community, and swift resolution of environmental problems - are presented here in general terms. An outline of the general process for the assessment of penalties is contained in Attachment A.

A companion document, A Framework for Statute-Specific Approaches to Penalty Assessments, will also be issued today. This document provides guidance to the user of the policy on how to write penalty assessment guidance specific to the user's particular program. The first part of the Framework provides general guidance on developing program-specific guidance; the second part contains a detailed appendix which explains the basis for that guidance. Thus, the user need only refer to the appendix when he wants an explanation of the guidance in the first part of the Framework.

In order to achieve the above Agency policy goals, all administratively imposed penalties and settlements of civil penalty actions should, where possible, be consistent with the guidance contained in the Framework document. Deviations from the Framework's methodology, where merited, are authorized as long as the reasons for the deviations are documented. Documentation for deviations from the Framework in program-specific guidance should be located in that guidance. Documentation for deviations from the program-specific guidance in calculating individual penalties should be contained in both the case files and in any memoranda that accompany the settlements.

The Agency will make every effort to urge administrative law judges to impose penalties consistent with this policy and any medium-specific implementing guidance. For cases that go to court, the Agency will request the statutory maximum penalty in the filed complaint. And, as proceedings warrant, EPA will continue to pursue a penalty no less than that supported by the applicable program policy. Of course, all penalties must be consistent with applicable statutory provisions, based upon the number and duration of the violations at issue.

Applicability

This policy statement does not attempt to address the specific mechanisms for achieving the goals set out for penalty assessment. Nor does it prescribe a negotiation strategy to achieve the penalty target figures. Similarly, it does not address differences between statutes or between priorities of different programs. Accordingly, it cannot be used, by itself, as a basis for determining an appropriate penalty in a specific action. Each EPA program office, in a joint effort with the Office of Enforcement and Compliance Monitoring, will revise existing policies, or write new policies as needed. These policies will guide the assessment of penalties under each statute in a manner consistent with this document and, to the extent reasonable, the accompanying Framework.

Until new program-specific policies are issued, the current penalty policies will remain in effect. Once new program-specific policies are issued, the Agency should calculate penalties as follows:

- For cases that are substantially settled, apply the old policy.
- For cases that will require further substantial negotiation, apply the new policy if that will not be too disruptive.

Because of the unique issues associated with civil penalties in certain types of cases, this policy does not apply to the following areas:

- CERCLA §107. This is an area in which Congress has directed a particular kind of response explicitly oriented toward recovering the cost of Government cleanup activity and natural resource damage.
- Clean Water Act §311(f) and (g). This also is cost recovery in nature. As in CERCLA §107 actions, the penalty assessment approach is inappropriate.
- Clean Air Act §120. Congress has set out in considerable detail the level of recovery under this section. It has been implemented with regulations which, as required by law, prescribe a non-exclusive remedy which focuses on recovery of the economic benefit of noncompliance. It should be noted, however, that this general penalty policy builds upon, and is consistent with the approach Congress took in that section.

Much of the rationale supporting this policy generally applies to non-profit institutions, including government entities. In applying this policy to such entities, EPA must exercise judgment case-by-case in deciding, for example, how to apply the economic benefit and ability to pay sanctions, if at all. Further guidance on the issue of seeking penalties against non-profit entities will be forthcoming.

Deterrence

The first goal of penalty assessment is to deter people from violating the law. Specifically, the penalty should persuade the violator to take precautions against falling into noncompliance again (specific deterrence) and dissuade others from violating the law (general deterrence). Successful deterrence is important because it provides the best protection for the environment. In addition, it reduces the resources necessary to administer the laws by addressing noncompliance before it occurs.

If a penalty is to achieve deterrence, both the violator and the general public must be convinced that the penalty places the violator in a worse position than those who have complied in a timely fashion. Neither the violator nor the general public is likely to believe this if the violator is able to retain an overall advantage from noncompliance. Moreover, allowing a violator to benefit from noncompliance punishes those who have complied by placing them at a competitive disadvantage. This creates a disincentive for compliance. For these reasons, it is Agency policy that penalties generally should, at a minimum, remove any significant economic benefits resulting from failure to comply with the law. This amount will be referred to as the "benefit component" of the penalty.

Where the penalty fails to remove the significant economic benefit, as defined by the program-specific guidance, the case development team must explain in the case file why it fails to do so. The case development team must then include this explanation in the memorandum accompanying each settlement for the signature of the Assistant Administrator of Enforcement and Compliance Monitoring, or the appropriate Regional official.

The removal of the economic benefit of noncompliance only places the violator in the same position as he would have been if compliance had been achieved on time. Both deterrence and fundamental fairness require that the penalty include an additional amount to ensure that the violator is economically worse off than if it had obeyed the law. This additional amount should reflect the seriousness of the violation. In doing so, the penalty will be perceived as fair. In addition the penalty's size will tend to deter other potential violators.

In some classes of cases, the normal gravity calculation may be insufficient to effect general deterrence. This could happen if, for example, there was extensive noncompliance with certain regulatory programs in specific areas of the United States. This would demonstrate that the normal penalty assessments had not been achieving general deterrence. In such cases, the case development team should consider increasing the gravity component sufficient to achieve general deterrence. These extra assessments should balance the other goals of this policy, particularly equitable treatment of the regulated community.

This approach is consistent with the civil penalty provisions in the environmental laws. Almost all of them require consideration of the seriousness of the violation. This additional amount which reflects the seriousness of the violation is referred to as the "gravity component". The combination of the benefit and gravity components yields the "preliminary deterrence figure."

As explained later in this policy, the case development team will adjust this figure as appropriate. Nevertheless, EPA typically should seek to recover, at a minimum, a penalty which includes the benefit component plus some non-trivial gravity component. This is important because otherwise, regulated parties would have a general economic incentive to delay compliance until the Agency commenced an enforcement action. Once the Agency brought the action, the violator could then settle for a penalty less than their economic benefit of noncompliance. This incentive would directly undermine the goal of deterrence.

Fair and Equitable Treatment of the Regulated Community

The second goal of penalty assessment is the fair and equitable treatment of the regulated community. Fair and equitable treatment requires that the Agency's penalties must display both consistency and flexibility. The consistent application of a penalty policy is important because otherwise the resulting penalties might be seen as being arbitrarily assessed. Thus violators would be more inclined to litigate over those penalties. This would consume Agency resources and make swift resolution of environmental problems less likely.

But any system for calculating penalties must have enough flexibility to make adjustments to reflect legitimate differences between similar violations. Otherwise the policy might be viewed as unfair. Again, the result would be to undermine the goals of the Agency to achieve swift and equitable resolutions of environmental problems.

Methods for quantifying the benefit and gravity components are explained in the Framework guidance. These methods significantly further the goal of equitable treatment of violators. To begin with, the benefit component promotes equity by removing the unfair economic advantage which a violator may have gained over complying parties. Furthermore, because the benefit and gravity components are generated systematically, they will exhibit relative consistency from case to case. Because the methodologies account for a wide range of relevant factors, the penalties generated will be responsive to legitimate differences between cases.

However, not all the possibly relevant differences between cases are accounted for in generating the preliminary deterrence amount. Accordingly, all preliminary deterrence amounts should be increased or mitigated for the following factors to account for differences between cases:

- Degree of willfulness and/or negligence
- History of noncompliance.
- Ability to pay.
- Degree of cooperation/noncooperation.
- Other unique factors specific to the violator or the case.

Mitigation based on these factors is appropriate to the extent the violator clearly demonstrates that it is entitled to mitigation.

The preliminary deterrence amount adjusted prior to the start of settlement negotiations yields the "initial penalty target figure". In administrative actions, this figure generally is the penalty assessed in the complaint. In judicial actions, EPA will use this figure as the first settlement goal. This settlement goal is an internal target and should not be revealed to the violator unless the case development team feels that it is appropriate. The initial penalty target may be further adjusted as negotiations proceed and additional information becomes available or as the original information is reassessed.

Swift Resolution of Environmental Problems

The third goal of penalty assessment is swift resolution of environmental problems. The Agency's primary mission is to protect the environment. As long as an environmental violation continues, precious natural resources, and possibly public health, are at risk. For this reason, swift correction of identified environmental problems must be an important goal of any enforcement action. In addition, swift compliance conserves Agency personnel and resources.

The Agency will pursue two basic approaches to promoting quick settlements which include swift resolution of environmental problems without undermining deterrence. Those two approaches are as follows:

1. Provide incentives to settle and institute prompt remedial action.

EPA policy will be to provide specific incentives to settle, including the following:

- The Agency will consider reducing the gravity component of the penalty for settlements in which the violator already has instituted expeditious remedies to the identified violations prior to the commencement of litigation.[1] This would be considered in the adjustment factor called degree of cooperation/noncooperation discussed above.

- The Agency will consider accepting additional environmental cleanup, and mitigating the penalty figures accordingly. But normally, the Agency will only accept this arrangement if agreed to in pre-litigation settlement.

Other incentives can be used, as long as they do not result in allowing the violator to retain a significant economic benefit.

2. Provide disincentives to delaying compliance.

The preliminary deterrence amount is based in part upon the expected duration of the violation. If that projected period of time is extended during the course of settlement negotiations due to the defendant's actions, the case development team should adjust that figure upward. The case development team should consider making this fact known to the violator early in the negotiation process. This will provide a strong disincentive to delay compliance.

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[1] For the purposes of this document, litigation is deemed to begin:

- for administrative actions - when the respondent files a response to an administrative complaint or when the time to file expires or

- for judicial actions - when an Assistant United States Attorney files a complaint in court.

Intent of Policy and Information Requests for Penalty Calculations

The policies and procedures set out in this document and in the Framework for Statute-Specific Approaches to Penalty Assessment are intended solely for the guidance of government personnel. They are not intended and cannot be relied upon to create any rights, substantive or procedural, enforceable by any party in litigation with the United States. The Agency reserves the right to act at variance with these policies and procedures and to change them at any time without public notice. In addition, any penalty calculations under this policy made in anticipation of litigation are exempt from disclosure under the Freedom of Information Act. Nevertheless as a matter of public interest, the Agency may elect to release this information in some cases.

Courtney M. Price
Assistant Administrator for
Enforcement and Compliance Monitoring

Attachment

ATTACHMENT A

Outline of Civil Penalty Assessment

I. Calculate Preliminary Deterrence Amount

A. Economic benefit component and

B. Gravity component

(This yields the preliminary deterrence amount.)

II. Apply Adjustment Factors

A. Degree of cooperation/noncooperation (indicated through pre-settlement action.)

B. Degree of willfulness and/or negligence.

C. History of noncompliance.

D. Ability to pay (optional at this stage.)

E. Other unique factors (including strength of case, competing public policy concerns.).

(This yields the initial penalty target figure.)

III. Adjustments to Initial Penalty Target Figure After Negotiations Have Begun

A. Ability to pay (to the extent not considered in calculating initial penalty target.)

B. Reassess adjustments used in calculating initial penalty target. (Agency may want to reexamine evidence used as a basis for the penalty in the light of new information.)

C. Reassess preliminary deterrence amount to reflect continued periods of noncompliance not reflected in the original calculation.

D. Alternative payments agreed upon prior to the commencement of litigation.

(This yields the adjusted penalty target figure.)

A FRAMEWORK FOR STATUTE-SPECIFIC APPROACHES TO PENALTY ASSESSMENTS:

IMPLEMENTING EPA'S POLICY ON CIVIL PENALTIES

EPA GENERAL ENFORCEMENT POLICY #GM - 22

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY

EFFECTIVE DATE: FEB 16 1984

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Introduction

This document, A Framework for Statute-Specific Approaches to Penalty Assessment, provides guidance to the user of the Policy on Civil Penalties on how to develop a medium-specific penalty policy. Such policies will apply to administratively imposed penalties and settlements of both administrative and judicial penalty actions.

In the Policy on Civil Penalties, the Environmental Protection Agency establishes a single set of goals for penalty assessment. Those goals - deterrence, fair and equitable treatment of the regulated community, and swift resolution of environmental problems - will be substantially impaired unless they are pursued in a consistent fashion. Even different terminology could cause confusion that would detract from the achievement of these goals. At the same time, too much rigidity will stifle negotiation and make settlement impossible.

The purpose of this document is to promote the goals of the Policy on Civil Penalties by providing a framework for medium-specific penalty policies. The Framework is detailed enough to allow individual programs to develop policies that will consistently further the Agency's goals and be easy to administer. In addition, it is general enough to allow each program to tailor the policy to the relevant statutory provisions and the particular priorities of each program.

While this document contains detailed guidance, it is not cast in absolute terms. Nevertheless, the policy does not encourage deviation from this guidance in either the development of medium-specific policies or in developing actual penalty figures. Where there are deviations in developing medium-specific policies, the reasons for those changes must be recorded in the actual policy. Where there are deviations from medium-specific policies in calculating a penalty figure, the case development team must detail the reasons for those changes in the case file. In addition, the rationale behind the deviations must be incorporated in the memorandum accompanying the settlement package to Headquarters or the appropriate Regional official.

This document is divided into two sections. The first one gives brief instructions to the user on how to write a medium-specific policy. The second section is an appendix that gives detailed guidance on implementing each section of the instructions and explains how the instructions are intended to further the goals of the policy.

Writing a Program Specific Policy

Summarized below are those elements that should be present in a program-specific penalty policy. For a detailed discussion of each of these ideas, the corresponding portions of the appendix should be consulted.

I. Developing a Penalty Figure

The development of a penalty figure is a two step process. First the case development team must calculate a preliminary deterrence figure. This figure is composed of the economic benefit component (where applicable) and the gravity component. The second step is to adjust the preliminary deterrence figure through a number of factors. The resulting penalty figure is the initial penalty target figure. In judicial actions, the initial penalty target figure is the penalty amount which the government normally sets as a goal at the outset of settlement negotiations. It is essentially an internal settlement goal and should not be revealed to the violator unless the case development team feels it is appropriate. In administrative actions, this figure generally is the penalty assessed in the complaint. While in judicial actions, the government's complaint will request the maximum penalty authorized by law.

This initial penalty target figure may be further adjusted in the course of negotiations. Each policy should ensure that the penalty assessed or requested is within any applicable statutory constraints, based upon the number and duration of violations at issue.

II. Calculating a Preliminary Deterrence Amount

Each program-specific policy must contain a section on calculating the preliminary deterrence figure. That section should contain materials on each of the following areas:

- Benefit Component. This section should explain:

  a. the relevent measure of economic benefit for various types of violations,
  b. the information needed,
  c. where to get assistance in computing this figure and
  d. how to use available computer systems to compare a case with similar previous violations.

- Gravity Component. This section should first rank different types of violations according to the seriousness of the act. In creating that ranking, the following factors should be considered:

  a. actual or possible harm,
  b. importance to the regulatory scheme and
  c. availability of data from other sources.

In evaluating actual or possible harm, your scheme should consider the following facts:

- amount of pollutant,
- toxicity of pollutant,
- sensitivity of the environment,
- length of time of a violation and
- size of the violator.

The policy then should assign appropriate dollar amounts or ranges of amounts to the different ranked violations to constitute the "gravity component". This amount, added to the amount reflecting economic benefit, constitutes the preliminary deterrence figure.

III. Adjusting the Preliminary Deterrence Amount to Derive the Initial Penalty Target Figure (Prenegotiation Adjustment)

Each program-specific penalty policy should give detailed guidance on applying the appropriate adjustments to the preliminary deterrence figure. This is to ensure that penalties also further Agency goals besides deterrence (i.e. equity and swift correction of environmental problems). Those guidelines should be consistent with the approach described in the appendix. The factors may be separated according to whether they can be considered before or after negotiation has begun or both.

Adjustments (increases or decreases, as appropriate) that can be made to the preliminary deterrence penalty to develop an initial penaly target to use at the outset of negotiation include:

- Degree of willfulness and/or negligence.

- Cooperation/noncooperation through pre-settlement action.

- History of noncompliance.

- Ability to pay.
- Other unique factors (including strength of case, competing public policy considerations).

The policy may permit consideration of the violator's ability to pay as an adjustment factor before negotiations begin. It may also postpone consideration of that factor until after negotiations have begun. This would allow the violator to produce evidence substantiating its inability to pay.

The policy should prescribe appropriate amounts, or ranges of amounts, by which the preliminary deterrence penalty should be adjusted. Adjustments will depend on the extent to which certain factors are pertinent. In order to preserve the penalty's deterrent effect, the policy should also ensure that, except for the specific exceptions described in this document, the adjusted penalty will: 1) always remove any significant economic benefit of noncompliance and 2) contain some non-trivial amount as a gravity component.

IV. Adjusting the Initial Penalty Target During Negotiations

Each program-specific policy should call for periodic reassessment of these adjustments during the course of negotiations. This would occur as additional relevant information becomes available and the old evidence is re-evaluated in the light of new evidence. Once negotiations have begun, the policy also should permit adjustment of the penalty target to reflect "alternative payments" the violator agrees to make in settlement of the case. Adjustments for alternative payments and pre-settlement corrective action are generally permissible only before litigation has begun.

Again, the policy should be structured to ensure that any settlement made after negotiations have begun reflects the economic benefit of noncompliance up to the date of compliance plus some non-trivial gravity component. This means that if lengthy settlement negotiations cause the violation to continue longer than initially anticipated, the penalty target figure should be increased. The increase would be based upon the extent that the violations continue to produce ongoing environmental risk and increasing economic benefit.

Use of the Policy In Litigation

Each program-specific policy should contain a section on the use of the policy in litigation. Requests for penalties should account for all the factors identified in the relevant statute and still allow for compromises in settlement without exceeding the parameters outlined in this document. (For each program, all the statutory factors are contained in the Framework either explicitly or as part of broader factors.) For administrative proceedings, the policy should explain how to formulate a penalty figure, consistent with the policy. The case development team will put this figure in the administrative complaint.

In judicial actions, the EPA will use the initial penalty target figure as its first settlement goal. This settlement goal is an internal target and should not be revealed to the violator unless the case development team feels it is appropriate. In judicial litigation, the government should request the maximum penalty authorized by law in its complaint. The policy should also explain how it and any applicable precedents should be used in responding to any explicit requests from a court for a minimum assesment which the Agency would deem appropriate.

Use of the Policy as a Feedback Device

Each program-specific policy should first explain in detail what information needs to be put into the case file and into the relevant computer tracking system. Furthermore, each policy should cover how to use that system to examine penalty assessments in other cases. This would thereby assist the Agency in making judgments about the size of adjustments to the penalty for the case at hand. Each policy should also explain how to present penalty calculations in litigation reports.

Courtney M. Price

Courtney M. Price
Assistant Administrator for
Enforcement and Compliance Monitoring

Attachment

APPENDIX

Introduction

This appendix contains three sections. The first two sections set out guidelines for achieving the goals of the Policy on Civil Penalties. The first section focuses on achieving deterrence by assuring that the penalty first removes any economic benefit from noncompliance. Then it adds an amount to the penalty which reflects the seriousness of the violation. The second section provides adjustment factors so that both a fair and equitable penalty will result and that there will be a swift resolution of the environmental problem. The third section of the framework presents some practical advice on the use of the penalty figures generated by the policy.

The Preliminary Deterrence Amount

The Policy on Civil Penalties establishes deterrence as an important goal of penalty assessment. More specifically, it specifies that any penalty should, at a minimum, remove any significant benefits resulting from noncompliance. In addition, it should include an amount beyond removal of economic benefit to reflect the seriousness of the violation. That portion of the penalty which removes the economic benefit of noncompliance is referred to as the "benefit component;" that part of the penalty which reflects the seriousness of the violation is referred to as the "gravity component." When combined, these two components yield the "preliminary deterrence amount."

This section of the document provides guidelines for calculating the benefit component and the gravity component. It will also present and discuss a simplified version of the economic benefit calculation for use in developing quick penalty determinations. This section will also discuss the limited circumstances which justify settling for less than the benefit component. The uses of the preliminary deterrence amount will be explained in subsequent portions of this document.

I. The Benefit Component

In order to ensure that penalties remove any significant economic benefit of noncompliance, it is necessary to have reliable methods to calculate that benefit. The existence of reliable methods also strengthens the Agency's position in both litigation and negotiation. This section sets out guidelines for computing the benefit component. It first addresses costs which are delayed by noncompliance. Then it addresses costs which are avoided completely by noncompliance. It also identifies issues to be considered when computing the benefit component for those violations where the benefit of noncompliance results from factors other than cost savings. This section concludes with a discussion of the proper use of the benefit component in developing penalty figures and in settlement negotiations.

A. Benefit from delayed costs

In many instances, the economic advantage to be derived from noncompliance is the ability to delay making the expenditures necessary to achieve compliance. For example, a facility which fails to construct required settling ponds will eventually have to spend the money needed to build those ponds in order to achieve compliance. But, by deferring these one-time nonrecurring costs until EPA or a State takes an enforcement action, that facility has achieved an economic benefit. Among the types of violations which result in savings from deferred cost are the following:

- Failure to install equipment needed to meet discharge or emission control standards.
- Failure to effect process changes needed to eliminate pollutants from products or waste streams.
- Testing violations, where the testing still must be done to demonstrate achieved compliance.
- Improper disposal, where proper disposal is still required to achieve compliance.
- Improper storage where proper storage is still required to achieve compliance.
- Failure to obtain necessary permits for discharge, where such permits would probably be granted. (While the avoided cost for many programs would be negligible, there are programs where the the permit process can be expensive).

The Agency has a substantial amount of experience under the air and water programs in calculating the economic benefit that results from delaying costs necessary to achieve compliance. This experience indicates that it is possible to estimate the benefit of delayed compliance through the use of a simple formula. Specifically, the economic benefit of delayed compliance may be estimated at: 5% per year of the delayed one-time capital cost for the period from the date the violation began until the date compliance was or is expected to be achieved. This will be referred to as the "rule of thumb for delayed compliance" method. Each program may adopt its own "rule of thumb" if appropriate. The applicable medium-specific guidance should state what that method is.

The rule of thumb method can usually be used in making decisions on whether to develop a case or in setting a penalty target for settlement negotiations. In using this rule of thumb method in settlement negotiations, the Agency may want to make the violator fully aware that it is using an estimate and not a more precise penalty determination procedure. The decision whether to reveal this information is up to the negotiators.

The "rule of thumb" method only provides a first-cut estimate of the benefit of delayed compliance. For this reason, its use is probably inappropriate in situations where a detailed analysis of the economic effect of noncompliance is needed to support or defend the Agency's position. Accordingly, this "rule of thumb" method generally should not be used in any of the following circumstances:

- A hearing is likely on the amount of the penalty.
- The defendant wishes to negotiate over the amount of the economic benefit on the basis of factors unique to the financial condition of the company.
- The case development team has reason to believe it will produce a substantially inaccurate estimate; for example, where the defendant is in a highly unusual financial position, or where noncompliance has or will continue for an unusually long period.

There usually are avoided costs associated with this type of situation. Therefore, the "rule of thumb for avoided costs" should also be applied. (See pages 9-10). For most cases, both figures are needed to yield the major portion of the economic benefit component.

When the rule of thumb method is not applicable, the economic benefit of delayed compliance should be computed using the Methodology for Computing the Economic Benefit of Noncompliance. This document, which is under development, provides a method for computing the economic benefit of noncompliance based on a detailed economic analysis. The method will largely be a refined version of the method used in the previous Civil Penalty Policy issued July 8, 1980, for the Clean Water Act and Title I of the Clean Air Act. It will also be consistent with the regulations implementing Section 120 of the Clean Air Act. A computer program will be available to the Regions to perform the analysis, together with instructions for its use. Until the Methodology is issued, the economic model contained in the July 8, 1980, Civil Penalty Policy should be used. It should be noted that the Agency recently modified this guidance to reflect changes in the tax law.

B. Benefit from avoided costs

Many kinds of violations enable a violator to permanently avoid certain costs associated with compliance.

- Cost savings for operation and maintenance of equipment that the violator failed to install.
- Failure to properly operate and maintain existing control equipment.
- Failure to employ sufficient number of adequately trained staff.
- Failure to establish or follow precautionary methods required by regulations or permits.
- Improper storage, where commercial storage is reasonably available.
- Improper disposal, where redisposal or cleanup is not possible.
- Process, operational, or maintenance savings from removing pollution equipment.
- Failure to conduct necessary testing.

As with the benefit from delayed costs, the benefit component for avoided costs may be estimated by another "rule of thumb" method. Since these costs will never be incurred, the estimate is the expenses avoided until the date compliance is achieved less any tax savings. The use of this "rule of thumb" method is subject to the same limitations as those discussed in the preceding section.

Where the "rule of thumb for avoided costs" method cannot be used, the benefit from avoided costs must be computed using the Methodology for Computing the Economic Benefit of Noncompliance. Again, until the Methodology is issued, the method contained in the July 8, 1980, Civil Penalty Policy should be used as modified to reflect recent changes in the tax law.

C. Benefit from competitive advantage

For most violations, removing the savings which accrue from noncompliance will usually be sufficient to remove the competitive advantage the violator clearly has gained from noncompliance. But there are some situations in which noncompliance allows the violator to provide goods or services which are not available elsewhere or are more attractive to the consumer. Examples of such violations include:

- Selling banned products.
- Selling products for banned uses.
- Selling products without required labelling or warnings.
- Removing or altering pollution control equipment for a fee, (e.g., tampering with automobile emission controls.)
- Selling products without required regulatory clearance, (e.g., pesticide registration or premanufacture notice under TSCA.)

To adequately remove the economic incentive for such violations, it is helpful to estimate the net profits made from the improper transactions (i.e. those transactions which would not have occurred if the party had complied). The case development team is responsible for identifying violations in which this element of economic benefit clearly is present and significant. This calculation may be substantially different depending on the type of violation. Consequently the program-specific policies should contain guidance on identifying these types of violations and estimating these profits. In formulating that guidance, the following principles should be followed:

- The amount of the profit should be based on the best information available concerning the number of transactions resulting from noncompliance.
- Where available, information about the average profit per transaction may be used. In some cases, this may be available from the rulemaking record of the provision violated.
- The benefit derived should be adjusted to reflect the present value of net profits derived in the past.

It is recognized that the methods developed for estimating the profit from those transactions will sometimes rely substantially on expertise rather than verifiable data. Nevertheless, the programs should make all reasonable efforts to ensure that the estimates developed are defensible. The programs are encouraged to work with the Office of Policy, Planning and Evaluation to ensure that the methods developed are consistent with the forthcoming Methodology for Computing the Economic Benefit of Noncompliance and with methods developed by other programs. The programs should also ensure that sufficient contract funds are available to obtain expert advice in this area as needed to support penalty development, negotiation and trial of these kinds of cases.

D. Settling cases for an amount less than the economic benefit

As noted above, settling for an amount which does not remove the economic benefit of noncompliance can encourage people to wait until EPA or the State begins an enforcement action before complying. For this reason, it is general Agency policy not to settle for less than this amount. There are three general areas where settling for less than economic benefit may be appropriate. But in any individual case where the Agency decides to settle for less than enconomic benefit, the case development team must detail those reasons in the case file and in any memoranda accompanying the settlement.

1. Benefit component involves insignificant amount

It is clear that assessing the benefit component and negotiating over it will often represent a substantial commitment of resources. Such a commitment of resources may not be warranted in cases where the magnitude of the benefit component is not likely to be significant, (e.g. not likely to have a substantial impact on the violator's competitive positions). For this reason, the case development team has the discretion not to seek the benefit component where it appears that the amount of that component is likely to be less than $10,000. (A program may determine that other cut-off points are more reasonable based on the likelihood that retaining the benefit could encourage noncomplying behavior.) In exercising that discretion, the case development team should consider the following factors:

- Impact on violator: The likelihood that assessing the benefit component as part of the penalty will have a noticeable effect on the violator's competitive position or overall profits. If no such effect appears likely, the benefit component should probably not be pursued.

- The size of the gravity component: If the gravity component is relatively small, it may not provide a sufficient deterrent, by itself, to achieve the goals of this policy.

- The certainty of the size of the benefit component: If the economic benefit is quite well defined, it is not likely to require as much effort to seek to include it in the penalty assessment. Such circumstances also increase the likelihood that the economic benefit was a substantial motivation for the noncompliance. This would make the inclusion of the benefit component more necessary to achieve specific deterrence.

It may be appropriate not to seek the benefit component in an entire class of violation. In that situation, the rationale behind that approach should be clearly stated in the appropriate medium-specific policy. For example, the most appropriate way to handle a small non-recurring operation and maintenance violation may be a small penalty. Obviously it makes little sense to assess in detail the economic benefit for each individual violation because the benefit is likely to be so small. The medium-specific policy would state this as the rationale.

2. Compelling public concerns

The Agency recognizes that there may be some instances where there are compelling public concerns that would not be served by taking a case to trial. In such instances, it may become necessary to consider settling a case for less than the benefit component. This may be done only if it is absolutely necessary to preserve the countervailing public interests. Such settlements might be appropriate where the following circumstances occur:

- There is a very substantial risk of creating precedent which will have a significant adverse effect upon the Agency's ability to enforce the law or clean up pollution if the case is taken to trial.

- Settlement will avoid or terminate an imminent risk to human health or the environment. This is an adequate justification only if injunctive relief is unavailable for some reason, and if settlement on remedial responsibilities could not be reached independent of any settlement of civil penalty liability.

- Removal of the economic benefit would result in plant closings, bankruptcy, or other extreme financial burden, and there is an important public interest in allowing the firm to continue in business.

> Alternative payment plans should be fully explored before resorting to this option. Otherwise, the Agency will give the perception that shirking one's environmental responsibilities is a way to keep a failing enterprise afloat. This exemption does not apply to situations where the plant was likely to close anyway, or where there is a likelihood of continued harmful noncompliance.

3. Litigation practicalities

The Agency realizes that in certain cases, it is highly unlikely the EPA will be able to recover the economic benefit in litigation. This may be due to applicable precedent, competing public interest considerations, or the specific facts, equities, or evidentiary issues pertaining to a particular case. In such a situation it is unrealistic to expect EPA to obtain a penalty in litigation which would remove the economic benefit. The case development team then may pursue a lower penalty amount.

II. The Gravity Component

As noted above, the Policy on Civil Penalties specifies that a penalty, to achieve deterrence, should not only remove any economic benefit of noncompliance, but also include an amount reflecting the seriousness of the violation. This latter amount is referred to as the "gravity component." The purpose of this section of the document is to establish an approach to quantifying the gravity component. This approach can encompass the differences between programs and still provide the basis for a sound consistent treatment of this issue.

A. Quantifying the gravity of a violation

Assigning a dollar figure to represent the gravity of a violation is an essentially subjective process. Nevertheless, the relative seriousness of different violations can be fairly accurately determined in most cases. This can be accomplished by reference to the goals of the specific regulatory scheme and the facts of each particular violation. Thus, linking the dollar amount of the gravity component to these objective factors is a useful way of insuring that violations of approximately equal seriousness are treated the same way.

Such a linkage promotes consistency. This consistency strengthens the Agency's position both in negotiation and before a trier of fact. This approach consequently also encourages swift resolution of environmental problems.

Each program must develop a system for quantifying the gravity of violations of the laws and regulations it administers.

This development must occur within the context of the penalty amounts authorized by law for that program. That system must be based, whenever possible, on objective indicators of the seriousness of the violation. Examples of such indicators are given below. The seriousness of the violation should be based primarily on: 1) the risk of harm inherent in the violation at the time it was committed and 2) the actual harm that resulted from the violation. In some cases, the seriousness of the risk of harm will exceed that of the actual harm. Thus, each system should provide enough flexibility to allow EPA to consider both factors in assessing penalties.

Each system must also be designed to minimize the possibility that two persons applying the system to the same set of facts would come up with substantially different numbers. Thus, to the extent the system depends on categorizing events, those categories must be clearly defined. That way there is little possibility for argument over the category in which a violation belongs. In addition, the categorization of the events relevant to the penalty decision should be noted in the penalty development portion of the case file.

B. Gravity Factors

In quantifying the gravity of a violation, a program-specific policy should rank different types of violations according to the seriousness of the act. The following is a suggested approach to ranking the seriousness of violations. In this approach to ranking, the following factors should be considered:

- Actual or possible harm: This factor focuses on whether (and to what extent) the activity of the defendant actually resulted or was likely to result in an unpermitted discharge or exposure.

- Importance to the regulatory scheme: This factor focuses on the importance of the requirement to achieving the goal of the statute or regulation. For example, if labelling is the only method used to prevent dangerous exposure to a chemical, then failure to label should result in a relatively high penalty. By contrast, a warning sign that was visibly posted but was smaller than the required size would not normally be considered as serious.

- Availability of data from other sources: The violation of any recordkeeping or reporting requirement is a very serious matter. But if the involved requirement is the only source of information, the violation is far more serious. By contrast, if the Agency has another readily available and cheap source for the necessary information, a smaller penalty may be appropriate. (E.g. a customer of the violator purchased all the violator's illegally produced substance. Even though the violator does not have the required records, the customer does.)

- Size of violator: In some cases, the gravity component should be increased where it is clear that the resultant penalty will otherwise have little impact on the violator in light of the risk of harm posed by the violation. This factor is only relevant to the extent it is not taken into account by other factors.

The assessment of the first gravity factor listed above, risk or harm arising from a violation, is a complex matter. For purposes of ranking violations according to seriousness, it is possible to distinguish violations within a category on the basis of certain considerations, including the following:

- Amount of pollutant: Adjustments for the concentration of the pollutant may be appropriate, depending on the regulatory scheme and the characteristics of the pollutant. Such adjustments need not be linear, especially if the pollutant can be harmful at low concentrations.

- Toxicity of the pollutant: Violations involving highly toxic pollutants are more serious and should result in relatively larger penalties.

- Sensitivity of the environment: This factor focuses on the location where the violation was committed. For example, improper discharge into waters near a drinking water intake or a recreational beach is usually more serious than discharge into waters not near any such use.

- The length of time a violation continues: In most circumstances, the longer a violation continues uncorrected, the greater is the risk of harm.

Although each program-specific policy should address each of the factors listed above, or determine why it is not relevant, the factors listed above are not meant to be exhaustive. The programs should make every effort to identify all factors relevant to assessing the seriousness of any violation. The programs should then systematically prescribe a dollar amount to yield a gravity component for the penalty. The program-specific policies may prescribe a dollar range for a certain category of violation rather than a precise dollar amount within that range based on the specific facts of an individual case.

The process by which the gravity component was computed must be memorialized in the case file. Combining the benefit component with the gravity component yields the preliminary deterrence amount.

In some classes of cases, the normal gravity calculation may be insufficient to effect general deterrence. This could happen if there was extensive noncompliance with certain regulatory programs in specific areas of the United States. This would demonstrate that the normal penalty assessments had not been achieving general deterrence. The medium specific policies should address this issue. One possible approach would be to direct the case development team to consider increasing the gravity component within a certain range to achieve general deterrence. These extra assessments should be consistent with the other goals of this policy.

Initial and Adjusted Penalty Target Figure

The second goal of the Policy on Civil Penalties is the equitable treatment of the regulated community. One important mechanism for promoting equitable treatment is to include the benefit component discussed above in a civil penalty assessment. This approach would prevent violators from benefitting economically from their noncompliance relative to parties which have complied with environmental requirements.

In addition, in order to promote equity, the system for penalty assessment must have enough flexibility to account for the unique facts of each case. Yet it still must produce enough consistent results to treat similarly-situated violators similarly. This is accomplished by identifying many of the legitimate differences between cases and providing guidelines for how to adjust the preliminary deterrence amount when those facts occur. The application of these adjustments to the preliminary deterrence amount prior to the commencement of negotiation yields the initial penalty target figure. During the course of negotiation, the case development team may further adjust this figure to yield the adjusted penalty target figure.

Nevertheless, it should be noted that equitable treatment is a two-edged sword. While it means that a particular violator will receive no higher penalty than a similarly situated violator, it also means that the penalty will be no lower.

I. Flexibility-Adjustment Factors

The purpose of this section of the document is to establish additional adjustment factors to promote flexibility and to identify management techniques that will promote consistency. This section sets out guidelines for adjusting penalties to account for some factors that frequently distinguish different cases. Those factors are: degree of willfulness and/or negligence, degree of cooperation/noncooperation, history of noncompliance, ability to pay, and other unique factors. Unless otherwise specified, these adjustment factors will apply only to the gravity component and not to the economic benefit component. Violators bear the burden of justifying mitigation adjustments they propose based on these factors.

Within each factor there are three suggested ranges of adjustment. The actual ranges for each medium-specific policy will be determined by those developing the policy. The actual ranges may differ from these suggested ranges based upon program specific needs. The first, typically a 0-20% adjustment of the gravity component, is within the absolute discretion of the case development team. [1] The second, typically a 21-30% adjustment, is only appropriate in unusual circumstances. The third range, typically beyond 30% adjustment, is only appropriate in extraordinary circumstances. Adjustments in the latter two ranges, unusual and extraordinary circumstances, will be subject to scrutiny in any performance audit. The case development team may wish to reevaluate these adjustment factors as the negotiations progress. This allows the team to reconsider evidence used as a basis for the penalty in light of new information.

Where the Region develops the penalty figure, the application of adjustment factors will be part of the planned Regional audits. Headquarters will be responsible for proper application of these factors in nationally-managed cases. A detailed discussion of these factors follows.

A. Degree of Willfulness and/or Negligence

Although most of the statutes which EPA administers are strict liability statutes, this does not render the violator's willfulness and/or negligence irrelevant. Knowing or willful violations can give rise to criminal liability, and the lack of any culpability may, depending upon the particular program, indicate that no penalty action is appropriate. Between these two extremes, the willfulness and/or negligence of the violator should be reflected in the amount of the penalty.

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[1] Absolute discretion means that the case development team may make penalty development decisions independent of EPA Headquarters. Nevertheless it is understood that in all judicial matters, the Department of Justice can still review these determinations if they so desire. Of course the authority to exercise the Agency's concurrence in final settlements is covered by the applicable delegations.

In assessing the degree of willfulness and/or negligence, all of the following points should be considered in most cases:

- How much control the violator had over the events constituting the violation.
- The forseeability of the events constituting the violation.
- Whether the violator took reasonable precautions against the events constituting the violation.
- Whether the violator knew or should have known of the hazards associated with the conduct.
- The level of sophistication within the industry in dealing with compliance issues and/or the accessibility of appropriate control technology (if this information is readily available). This should be balanced against the technology forcing nature of the statute, where applicable.
- Whether the violator in fact knew of the legal requirement which was violated.

It should be noted that this last point, lack of knowledge of the legal requirement, should never be used as a basis to reduce the penalty. To do so would encourage ignorance of the law. Rather, knowledge of the law should serve only to enhance the penalty.

The amount of control which the violator had over how quickly the violation was remedied is also relevent in certain circumstances. Specifically, if correction of the environmental problem was delayed by factors which the violator can clearly show were not reasonably foreseeable and out of its control, the penalty may be reduced.

The suggested approach for this factor is for the case development team to have absolute discretion to adjust the penalty up or down by 20% of the gravity component. Adjustments in the ± 21-30% range should only be made in unusual circumstances.

Adjustments for this factor beyond ± 30% should be made only in extraordinary circumstances. Adjustments in the unusual or extraordinary circumstance range will be subject to scrutiny in any audit of performance.

B. Degree of Cooperation/Noncooperation

The degree of cooperation or noncooperation of the violator in remedying the violation is an appropriate factor to consider in adjusting the penalty. Such adjustments are mandated by both the goals of equitable treatment and swift resolution of environmental problems. There are three areas where this factor is relevant.

1. Prompt reporting of noncompliance

Cooperation can be manifested by the violator promptly reporting its noncompliance. Assuming such self-reporting is not required by law, such behavior should result in the mitigation of any penalty.

The suggested ranges of adjustment are as follows. The case development team has absolute discretion on any adjustments up to ± 10% of the gravity component for cooperation/noncooperation. Adjustments can be made up to ± 20% of the gravity component, but only in unusual circumstances. In extraordinary circumstances, such as self reporting of a TSCA premanufacture notice violation, the case development team may adjust the penalty beyond the ± 20% factor. Adjustments in the unusual or extraordinary circumstances ranges will be subject to scrutiny in any performance audit.

2. Prompt correction of environmental problems

The Agency should provide incentives for the violator to commit to correcting the problem promptly. This correction must take place before litigation is begun, except in extraordinary circumstances.[2] But since these incentives must be consistent with deterrence, they must be used judiciously.

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[2] For the purposes of this document, litigation is deemed to begin:

- for administrative actions - when the respondent files a response to an administrative complaint or when the time to file expires or
- for judicial actions - when an Assistant United States Attorney files a complaint in court.

The circumstances under which the penalty is reduced depend on the type of violation involved and the source's response to the problem. A straightforward reduction in the amount of the gravity component of the penalty is most appropriate in those cases where either: 1) the environmental problem is actually corrected prior to initiating litigation, or 2) ideally, immediately upon discovery of the violation. Under this approach, the reduction typically should be a substantial portion of the unadjusted gravity component.

In general, the earlier the violator instituted corrective action after discovery of the violation and the more complete the corrective action instituted, the larger the penalty reduction EPA will consider. At the discretion of the case development team, the unadjusted gravity component may be reduced up to 50%. This would depend on how long the environmental problem continued before correction and the amount of any environmental damage. Adjustments greater than 50% are permitted, but will be the subject of close scrutiny in auditing performance.

It should be noted that in some instances, the violator will take all necessary steps toward correcting the problem but may refuse to reach any agreement on penalties. Similarly, a violator may take some steps to ameliorate the problem, but choose to litigate over what constitutes compliance. In such cases, the gravity component of the penalty may be reduced up to 25% at the discretion of the case development team. This smaller adjustment still recognizes the efforts made to correct the environmental problem, but the benefit to the source is not as great as if a complete settlement is reached. Adjustments greater than 25% are permitted, but will be the subject of close scrutiny in auditing performance.

In all instances, the facts and rationale justifying the penalty reduction must be recorded in the case file and included in any memoranda accompanying settlement.

3. Delaying compliance

Swift resolution of environmental problems will be encouraged if the violator clearly sees that it will be financially disadvantageous for the violator to litigate without remedying noncompliance. The settlement terms described in the preceding section are only available to parties who take steps to correct a problem prior to initiation of litigation. To some extent, this is an incentive to comply as soon as possible. Nevertheless, once litigation has commenced, it should be clear that the defendant litigates at its own risk.

In addition, the methods for computing the benefit component and the gravity component are both structured so that the penalty target increases the longer the violation remains uncorrected. The larger penalty for longer noncompliance is systematically linked to the benefits accruing to the violator and to the continuing risk to human health and the environment. This occurs even after litigation has commenced. This linkage will put the Agency in a strong position to convince the trier of fact to impose such larger penalties. For these reasons, the Policy on Civil Penalties provides substantial disincentives to litigating without complying.

C. History of noncompliance

Where a party has violated a similar environmental requirement before, this is usually clear evidence that the party was not deterred by the Agency's previous enforcement response. Unless the previous violation was caused by factors entirely out of the control of the violator, this is an indication that the penalty should be adjusted upwards.

In deciding how large these adjustments should be, the case development team should consider the following points:

- How similar the previous violation was.
- How recent the previous violation was.
- The number of previous violations.
- Violator's response to previous violation(s) in regard to correction of the previous problem.

Detailed criteria for what constitutes a "similar violation" should be contained in each program-specific policy. Nevertheless a violation should generally be considered "similar" if the Agency's previous enforcement response should have alerted the party to a particular type of compliance problem. Some facts that indicate a "similar violation" was committed are as follows:

- The same permit was violated.
- The same substance was involved.
- The same process points were the source of the violation.
- The same statutory or regulatory provision was violated.

- A similar act or omission (e.g. the failure to properly store chemicals) was the basis of the violation.

For purposes of this section, a "prior violation" includes any act or omission for which a formal enforcement response has occurred (e.g. notice of violation, warning letter, complaint, consent decree, consent agreement, or final order). It also includes any act or omission for which the violator has previously been given written notification, however informal, that the Agency believes a violation exists.

In the case of large corporations with many divisions or wholly-owned subsidiaries, it is sometimes difficult to determine whether a previous instance of noncompliance should trigger the adjustments described in this section. New ownership often raises similar problems. In making this determination, the case development team should ascertain who in the organization had control and oversight responsibility for the conduct resulting in the violation. In some situations the same persons or the same organizational unit had or reasonably should have had control or oversight responsibility for violative conduct. In those cases, the violation will be considered part of the compliance history of that regulated party.

In general, the case development team should begin with the assumption that if the same corporation was involved, the adjustments for history of noncompliance should apply. In addition, the case development team should be wary of a party changing operators or shifting responsibility for compliance to different groups as a way of avoiding increased penalties. The Agency may find a consistent pattern of noncompliance by many divisions or subsidiaries of a corporation even though the facilities are at different geographic locations. This often reflects, at best, a corporate-wide indifference to environmental protection. Consequently, the adjustment for history of noncompliance should probably apply unless the violator can demonstrate that the other violating corporate facilities are independent.

The following are the Framework's suggested adjustment ranges. If the pattern is one of "dissimilar" violations, relatively few in number, the case development team has absolute discretion to raise the penalty amount by 35%. For a relatively large number of dissimilar violations, the gravity component can be increased up to 70%. If the pattern is one of "similar" violations, the case development team has absolute discretion to raise the penalty amount up to 35% for the first repeat violation, and up to 70% for further repeated similar violations. The case development team may make higher adjustments in extraordinary circumstances, but such adjustments will be subject to scrutiny in any performance audit.

D. Ability to pay

The Agency will generally not request penalties that are clearly beyond the means of the violator. Therefore EPA should consider the ability to pay a penalty in arriving at a specific final penalty assessment. At the same time, it is important that the regulated community not see the violation of environmental requirements as a way of aiding a financially troubled business. EPA reserves the option, in appropriate circumstances, of seeking a penalty that might put a company out of business.

For example, it is unlikely that EPA would reduce a penalty where a facility refuses to correct a serious violation. The same could be said for a violator with a long history of previous violations. That long history would demonstrate that less severe measures are ineffective.

The financial ability adjustment will normally require a significant amount of financial information specific to the violator. If this information is available prior to commencement of negotiations, it should be assessed as part of the initial penalty target figure. If it is not available, the case development team should assess this factor after commencement of negotiation with the source.

The burden to demonstrate inability to pay, as with the burden of demonstrating the presence of any mitigating circumstances, rests on the defendant. If the violator fails to provide sufficient information, then the case development team should disregard this factor in adjusting the penalty. The National Enforcement Investigations Center (NEIC) has developed the capability to assist the Regions in determining a firm's ability to pay. Further information on this system will be made available shortly under separate cover.

When it is determined that a violator cannot afford the penalty prescribed by this policy, the following options should be considered:

- Consider a delayed payment schedule: Such a schedule might even be contingent upon an increase in sales or some other indicator of improved business. This approach is a real burden on the Agency and should only be considered on rare occasions.

- Consider non-monetary alternatives, such as public service activities: For example, in the mobile source program, fleet operators who tampered with pollution control devices on their vehicles agreed to display anti-tampering ads on their vehicles. Similar solutions may be possible in other industries.

- Consider straight penalty reductions as a last recourse: If this approach is necessary, the reasons for the case development team's conclusion as to the size of the necessary reduction should be made a part of the formal enforcement file and the memorandum accompanying the settlement. [3/]
- Consider joinder of the violator's individual owners: This is appropriate if joinder is legally possible and justified under the circumstances.

Regardless of the Agency's determination of an appropriate penalty amount to pursue based on ability to pay considerations, the violator is still expected to comply with the law.

E. Other unique factors

Individual programs may be able to predict other factors that can be expected to affect the appropriate penalty amount. Those factors should be identified and guidelines for their use set out in the program-specific policies. Nevertheless, each policy should allow for adjustment for unanticipated factors which might affect the penalty in each case.

It is suggested that there be absolute discretion to adjust penalties up or down by 10% of the gravity component for such reasons. Adjustments beyond the absolute discretion range will be subject to scrutiny during audits. In addition, they will primarily be allowed for compelling public policy concerns or the strengths and equities of the case. The rationale for the reduction must be expressed in writing in the case file and in any memoranda accompanying the settlement. See the discussion on pages 12 and 13 for further specifics on adjustments appropriate on the basis of either compelling public policy concerns or the strengths and equities of the case.

II. Alternative Payments

In the past, the Agency has accepted various environmentally beneficial expenditures in settlement of a case and chosen not to

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[3/] If a firm fails to pay the agreed-to penalty in an administrative or judicial final order, then the Agency must follow the Federal Claims Collection Act procedures for obtaining the penalty amount.

pursue more severe penalties. In general, the regulated community has been very receptive to this practice. In many cases, violators have found "alternative payments" to be more attractive than a traditional penalty. Many useful projects have been accomplished with such funds. But in some instances, EPA has accepted for credit certain expenditures whose actual environmental benefit has been somewhat speculative.

The Agency believes that these alternative payment projects should be reserved as an incentive to settlement before litigation. For this reason, such arrangements will be allowed only in prelitigation agreements except in extraordinary circumstances.

In addition, the acceptance of alternative payments for environmentally beneficial expenditures is subject to certain conditions. The Agency has designed these conditions to prevent the abuse of this procedure. Most of the conditions below applied in the past, but some are new. All of these conditions must be met before alternative payments may be accepted:[4]

- No credits can be given for activities that currently are or will be required under current law or are likely to be required under existing statutory authority in the forseeable future (e.g., through upcoming rulemaking).
- The majority of the project's environmental benefit should accrue to the general public rather than to the source or any particular governmental unit.
- The project cannot be something which the violator could reasonably be expected to do as part of sound business practices.

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[4] In extraordinary circumstances, the Agency may choose not to pursue higher penalties for "alternative" work done prior to commencement of negotiations. For example, a firm may recall a product found to be in violation despite the fact that such recall is not required. In order for EPA to forgo seeking higher penalties, the violator must prove that it has met the other conditions herein stated. If the violator fails to prove this in a satisfactory manner, the case development team has the discretion to completely disallow the credit project. As with all alternative projects, the case development team has the discretion to still pursue some penalties in settlement.

- EPA must not lower the amount it decides to accept in penalties by more than the after-tax amount the violator spends on the project.[5]

In all cases where alternative payments are allowed, the case file should contain documentation showing that each of the conditions listed above have been met in that particular case. In addition when considering penalty credits, Agency negotiators should take into account the following points:

- The project should not require a large amount of EPA oversight for its completion. In general the less oversight the proposed credit project would require from EPA to ensure proper completion, the more receptive EPA can be toward accepting the project in settlement.

- The project should receive stronger consideration if it will result in the abatement of existing pollution, ameliorate the pollution problem that is the basis of the government's claim and involve an activity that could be ordered by a judge as equitable relief.

- The project should receive stronger consideration if undertaken at the facility where the violation took place.

- The company should agree that any publicity it disseminates regarding its funding of the project must include a statement that such funding is in settlement of a lawsuit brought by EPA or the State.

5/ This limitation does not apply to public awareness activities such as those employed for fuel switching and tampering violations under the Clean Air Act. The purpose of the limitation is to preserve the deterrent value of the settlement. But these violations are often the result of public misconceptions about the economic value of these violations. Consequently, the public awareness activities can be effective in preventing others from violating the law. Thus, the high general deterrent value of public awareness activities in these circumstances obviates the need for the one-to-one requirement on penalty credits.

Each alternative payment plan must entail an identified project to be completely performed by the defendant. Under the plan, EPA must not hold any funds which are to be spent at EPA's discretion unless the relevant statute specifically provides that authority. The final order, decree or judgment should state what financial penalty the violator is actually paying and describe as precisely as possible the credit project the violator is expected to perform.

III. Promoting Consistency

Treating similar situations in a similar fashion is central to the credibility of EPA's enforcement effort and to the success of achieving the goal of equitable treatment. This document has established several mechanisms to promote such consistency. Yet it still leaves enough flexibility for settlement and for tailoring the penalty to particular circumstances. Perhaps the most important mechanisms for achieving consistency are the systematic methods for calculating the benefit component and gravity component of the penalty. Together, they add up to the preliminary deterrence amount. The document also sets out guidance on uniform approaches for applying adjustment factors to arrive at an initial penalty target prior to beginning settlement negotiations or an adjusted penalty target after negotiations have begun.

Nevertheless, if the Agency is to promote consistency, it is essential that each case file contain a complete description of how each penalty was developed. This description should cover how the preliminary deterrence amount was calculated and any adjustments made to the preliminary deterrence amount. It should also describe the facts and reasons which support such adjustments. Only through such complete documentation can enforcement attorneys, program staff and their managers learn from each others' experience and promote the fairness required by the Policy on Civil Penalties.

To facilitate the use of this information, Office of Legal and Enforcement Policy will pursue integration of penalty information from judicial enforcement actions into a computer system. Both Headquarters and all Regional offices will have access to the system through terminals. This would make it possible for the Regions to compare the handling of their cases with those of other Regions. It could potentially allow the Regions, as well as Headquarters, to learn from each others' experience and to identify problem areas where policy change or further guidance is needed.

Use of Penalty Figure in Settlement Discussions

The *Policy* and *Framework* do not seek to constrain negotiations. Their goal is to set settlement target figures for the internal use of Agency negotiators. Consequently, the penalty figures under negotiation do not necessarily have to be as low as the internal target figures. Nevertheless, the final settlement figures should go no lower than the internal target figures unless either: 1) the medium-specific penalty policy so provides or 2) the reasons for the deviation are properly documented.

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EMS

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

March 7, 1977

MEMORANDUM

OFFICE OF ENFORCEMENT

TO: Regional Administrators
NPDES State Program Directors

SUBJECT: Implementation Plan of an Enforcement [redacted]

Since the decision to implement an EMS as outlined in the Deputy Administrator's memo to you dated September 17, 1976, the Office of Water Enforcement has held three National meetings with Regional and State personnel to discuss the system and solicit comments. The comments we received from the Regions and NPDES States were studied by two Federal/State oversight committees. The committees recommended the inclusion of many of the comments and these are incorporated in the attached Enforcement Management System (EMS) Guide.

This Guide explains the steps that are necessary to bring each Regional or State enforcement system into conformance with the principles and subparts of EMS. Although the States are not required to adopt standardized compliance review and enforcement sequences, I strongly urge the Regions to introduce them to State enforcement personnel and encourage their implementation in the spirit of maintaining an effective partnership. This system will establish greater unity in meeting the requirements of the Act and provide the basis for greater cooperation between the regulatory agencies, and hopefully will result in surer and effective enforcement of the NPDES program.

Since the Regions must take immediate steps to implement fully the procedures outlined in the Guide, the attached schedule must be followed if the system is to be operational by October 1, 1977. During the period in which these procedures are installed or modified in Regional enforcement systems, Chuck Evans, of the Compliance Branch will act as coordinator to provide any assistance necessary. You may contact him at (202) 755-0994. Any difficulties which cannot be resolved by Headquarters or Regional staffs should be brought to the attention of the Deputy Assistant Administrator for Water Enforcement.

Stanley W. Legro
Stanley W. Legro

Attachments

Enforcement Management System
Implementation Schedule

MAR 15 - The Regions will review the Guide and prepare a plan to indicate how they will integrate EMS with their current administrative procedures. This plan should be of sufficient detail to allow the Headquarters staff to determine if it is feasible. The plan should include a discussion of the following points:

- a. the positions involved,
- b. the flow of information to control and decision points in the review process,
- c. the systems for tracking and evaluating compliance information,
- d. the staff elements who will use the required forms and guides,
- e. expected time frames for the accomplishment of each function,
- f. the management levels or elements that will monitor and review the work of the clerical, technical and legal staffs,
- g. resource implications associated with any changes necessary to achieve conformity with the system in the Guide,
- h. apparently insurmountable problems with any of the above items,
- i. the interim dates by which the Regional EMS will take shape.

APR 15 - Submission of Regional plans to Headquarters for review and comment.

MAY 10 - Return of Headquarters comments to Regional Enforcement Directors.

JUN 1 - Progress Reports from the Regions on the conversion.

JUL 1 - Submission of Regional procedural manuals detailing the integration of EMS with their overall program.

AUG 1 - Return of Headquarters comments on the Regional manuals.

SEP 1 - Submission of final plans and manuals for Headquarters review.

OCT 1 - Attainment of operational level, subject to review.

March 3, 1977

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I. Guide for the Water Enforcement National Data Base (WENDB)

II. Technical Review Criteria

III. NPDES Violation Summary

IV. Enforcement Response Guide

V. Compliance Evaluation Inspection Forms

PURPOSE OF THIS GUIDE

This guide will provide the basis for establishing a relatively uniform method of conducting compliance review and initiating enforcement actions.

WHO WILL USE THIS GUIDE

This guide is intended for two groups of potential users:

- The Regional/State managers and supervisors who must organize, plan and control the numerous research and decision-making functions that make up the process of enforcement management.
- The clerical, technical and legal personnel who actively participate in the review and decision sequences that establish the priorities for Federal/State enforcement of all regulations stemming from the Federal Water Pollution Control Act (Act).

Forward

This publication is a guide. Beyond the specific requirements identified in the text, it is meant to be a standard with which users may evaluate the effectiveness of their management systems. The intent is to aid the Regional/State users in setting priorities for enforcement actions based on limited resources and the need to provide a consistent level of response to violations. It is hoped that this GUIDE will encourage program planners to reevaluate the effectiveness of their enforcement operations, develop an increased awareness of review and decision functions, maintain surveillance of them, and initiate and carry out appropriate enforcement actions under the National Pollutant Discharge Elimination System (NPDES) program.

This publication is called a 'guide' to indicate that the reader has been given a logical procedure to follow in organizing the sequence of compliance-review procedures into an efficient information system. Beyond specific requirements, the reader is given general instructions and therefore must use sound management procedures to develop a usable program.

This guide may be updated in time to provide the latest thinking on review priorities, violation categories, enforcement strategies, resource allocations and offer practical ideas for carrying out a more effective compliance review and response.

Success depends in a large measure on maintaining a strong enforcement attitude, making maximum use of clerical and technical positions and performing self assessment with renewed determination. The improved quality of our operations rests upon the Agency's awareness of its effectiveness in meeting the requirements of the Act.

ACKNOWLEDGEMENTS

This document has been prepared with painstaking effort by a number of persons whose devotion to the national water enforcement program is exemplary. Over a long period, they have been relied upon to contribute not only their time but also the unique perspective which they can bring to bear on the administration of a national program conducted at the local level. Through their hard work and dedication, the Office of Water Enforcement (OWE) is moving closer toward increased efficiency and responsiveness in the management of its Regional operations. The unified approach developed by the following workgroups and documented in the EMS *Guide* will become the backbone of EPA's national enforcement posture. In addition, OWE is indebted to its clerical staff, most notably Kenneth Goggin, without whose patience and tireless service this document would not have been assembled.

Workgroup: The *Guide* for the development of an EMS

Chairman: Dale Bryson, EPA, Region V

Members: R. Thomas Watson, EPA, Headquarters
Dennis Leisseg, State of Nebraska
Dan Kollias, State of Oregon
Wayne Wirtanen, EPA, Region I

Workgroup: The Technical Review Criteria

Chairman: David N. Lyons, EPA, Headquarters

Members: Richard Barlow, State of Connecticut
Michael Bellanca, State of Virginia
George Harlow, EPA, Region IV
Carl Walters, EPA, Region VII
James Grafton, EPA, Headquarters

Workgroup: The Enforcement Response Guide

Chairman: J. Brian Molloy, EPA, Headquarters

Members:
John Harper, State of Mississippi
Linda Boshert, State of Wisconsin
David Mowday, EPA, Region IX
Patrick Monihan, EPA, Region VII
Rosanne Light, EPA, Headquarters

Workgroup: The EMS National Oversight Committee

Chairman: Dale Bryson, EPA, Region V

Members:
Charles J. Evans, EPA, Headquarters
Charles Sapp, EPA, Region III
Ronald McCutcheon, EPA, Region VII
Kenneth Alkema, EPA, Region VIII
Paul Williamson, State of Colorado
Jay Ringenberg, State of Nebraska

Workgroup: The EMS National Review Committee on the Violation Summary

Chairman: James R. Patrick, Jr., EPA, Region IV

Members:
Paul Ambrose, EPA, Region III
Barry Kelly, EPA, Region III
Joe Hamilton, EPA, Region III
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Rosanne Light, EPA, Headquarters
Charles J. Evans, EPA, Headquarters
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PART ONE (I)

BACKGROUND

A. INTRODUCTION

The NPDES program initially focused on permit issuance and is now focusing on the compliance and enforcement phases. The primary objective is compliance by the permittee with applicable permit conditions. With this shift in emphasis has come the increased awareness that the program will be effective only to the extent that EPA and the States are able to identify instances of noncompliance and take appropriate and timely actions with uniformity and consistency. At the request of the Deputy Administrator, the Office of Water Enforcement in conjunction with representatives of EPA Regions and NPDES States developed the Enforcement Management System (EMS).

B. DEFINITION AND PURPOSE

EMS is an administrative system, based on sound management procedures, that allows the management and staff in the Regions to monitor and assess the status of compliance-monitoring and enforcement activities at any given point in time. EMS procedures are designed to organize each analytical function within an organization in order to process compliance-monitoring information in an orderly, timely and consistent fashion. In addition, EMS procedures focus on the need to establish priorities and, based on the requirements identified by these priorities, use available resources in the most appropriate enforcement strategies. Implementation of these principles and their subparts will result in the following enhancements:

1. decision making, which will
   a. aid in setting priorities,
   b. increase management effectiveness and
   c. translate compliance information into the appropriate enforcement response,
2. standard regulation of permittees through consistency in
   a. the pre-enforcement evaluation of noncompliance and
   b. the Agency's response to given categories of violations and
3. maximum use of resources and improved efficiency.

EMS consists of seven basic principles:

1. comprehensive source inventory,
2. orderly flow of information,
3. internal management control,
4. orderly, consistent, pre-enforcement evaluation,
5. orderly and consistent enforcement evaluation,
6. orderly and consistent legal action and follow up and
7. orderly initiation of compliance inspections.

Each of these seven principles is discussed in greater detail in Part Two. Associated with each principle are certain mandatory subparts which must be documented and incorporated into a procedural manual. These subparts are introduced in Section E.

C. EPA/State Roles in NPDES and EMS

EPA is decentralized, with the authority and responsibility for implementing most aspects of the NPDES program placed in the Regions. In addition, State agencies with approved permit programs have primary responsibility in their jurisdictions. With the Regions implementing the basic EMS principles, and the States moving steadily towards full compatibility with EMS, a base level of national uniformity will result while still accomodating differences between Regional and local situations.

The implementation of the NPDES program will only succeed if there is a true Federal-State partnership. EMS should be used to foster that partnership to the maximum extent possible. The system should be operated so that, in the daily conduct of business during which both agencies discharge their respective enforcement responsibilities, a necessary level of communication between the two partners is maintained. When a State has the primary enforcement authority over its permittees, it is also expected to have the primary responsibility for initiating appropriate actions to insure compliance by those permittees. EPA Regions have certain mandated responsibilities in their review of State enforcement programs. The level of communication and cooperation reflected in EMS principles should insure the discharge of these responsibilities in the manner intended by the Act.

EPA Headquarters must exercise a review of the Regions and, to a certain extent, the States through the Regions. This review is for the purpose of guiding the achievement of the goals of the Act.

The EMS Guide should be reviewed and used by the States and the Regions in the development and improvement of their own systems. The system is supportive of the Agency's policies of delegated control. It is recognized that EPA Regional offices and NPDES States should determine the specific procedures which implement the required subparts of the EMS principles. This will accommodate local organizational resources and unique problems while still preserving uniformity and consistency in the national enforcement program.

EMS provides for the establishment of priorities in the review of NPDES information. Based upon these priorities, the system provides for a more efficient use of available resources. Because of resource limitations, the regulatory agencies have already established certain priorities through the designation of major and minor dischargers. EMS strengthens this priority setting, allows for its adjustment and controls the rate and depth of enforcement review.

D. Implementation of EMS (General Requirements)

Implementation of EMS in EPA Regional Offices is mandatory (see the Deputy Administrator's September 17, 1976, Policy Memorandum on this subject). Each Region must compare its present compliance-monitoring and enforcement system with the EMS principles outlined in this guide. Where a Regional system does not presently incorporate a principle or a mandatory subpart, the Regional system must be adjusted to do so.

Implementation of EMS is not mandatory in the NPDES States. However, States should work towards enforcement systems compatible with those in EPA Regions. Through the Section 106 program grant process, funds are provided to the States to support effective water pollution control programs. As part of the grant application, the States are required to describe, in sufficient detail, their compliance-monitoring and enforcement program. This requires a written description of the management system which the State has developed to give meaning to its NPDES authority. By combining the development of EMS with the 106 process, a State's system will be reviewed annually by both parties as an integral and vital part of the overall development of the State's program plan. An effective EMS, as part of the 106 program plan requirements, coupled with the Memorandum of Agreement, should provide a complete description of the internal workings of the State enforcement system as well as the relationship between the State and the Regional Office.

The EMS directions discussed in the following pages describe the minimum requirements of an effective compliance-tracking and enforcement system. As long as all the principles and subparts are incorporated and followed in practice, the system will be acceptable and there will be a sufficient base level of national uniformity in managing the enforcement aspects of the Act.

E. IMPLEMENTATION OF EMS (Specific Requirements)

The seven basic principles of EMS combine to form the framework of sound enforcement management. This framework is buttressed by subparts or routines which give enforcement its substance. The mandatory subparts of EMS include the use of the following items:

1. the Guide for the support of the Water Enforcement National Data Base,

2. paraprofessionals to perform the pre-enforcement evaluation using the Technical Review Criteria,
3. the Violation Summary,
4. the Enforcement Response Guide,
5. the Compliance Evaluation Inspection and Sampling Manuals and
6. maximum response times.

Other necessary and required subparts are outlined in the discussion of EMS principles in Part II.

PART TWO (II)

THE PRINCIPLES AND SUBPARTS OF THE ENFORCEMENT MANAGEMENT SYSTEM

Source Inventory

The data base of the EMS is a complete, accurate and current inventory of compliance information on all sources covered by NPDES permits. An effective program cannot exist without this information base. The source inventory should be maintained in conjunction with a fully developed system which provides for the following items:

A. basic identification information concerning each source such as name, location, permit number, compliance dates and effluent limits,

B. a chronological record of a permittee's construction or discharge performance (This historical profile will consist of entries such as violation summaries, logs of enforcement actions and correspondence. The standard EMS Violation Summary is discussed in greater detail in [4.I.].),

C. a routine schedule for updating the inventory to reflect changes in basic information such as abatement schedules, type of ownership and addresses,

D. the capability for automated operation (As the number of sources in the inventory increases, automated data handling is generally more efficient than manual inventory maintenance.),

E. routine maintenance of files by the clerical staff (It is recommended that those responsible for the maintenance of the source inventory be contained within a specific, identifiable, organizational entity so that one group is clearly responsible for the completeness, accuracy and currency of source information.) and

F. the regular update of the Water Enforcement National Data Base (There is a need on a national level to have readily available information on NPDES permits. This information must be accessible to EPA Headquarters, Regional Offices and NPDES States. EMS source inventory data will be the base information for WENDB. The guide for the support of this system is provided as Attachment I. Its use is required.).

Information Control

The following are examples of the types of reports or information requiring evaluation in this system.

- Compliance Schedule Reports
- Construction grant information
- Discharge Monitoring Reports
- Compliance inspection reports
- Reports from State agencies
- Reports from Federal agencies
- Reports and complaints from citizens
- Adjudicatory hearing information
- Permittee noncompliance notification reports
- Permit modification/variance requests

Procedures must be established to integrate information from various sources into an effective data flow. The data flow should be channeled to decision and control points in the system.

To insure timely response to noncompliance situations, time frame controls must be incorporated in each level of evaluation and decision making.

Internal Management Control

There is a need for each management level in an organization to understand and assess the effectiveness of its operation within the whole program. This requires self-evaluation which focuses on specific management objectives and procedures. It can best be accomplished by a special unit which monitors and evaluates the Agency's progress in identifying and dealing with instances of noncompliance. Routine procedures must be followed to analyze the efficiency of all internal stops so that bottlenecks may be removed. The internal tracking system should be able to locate information at any given time. The EMS must provide for the maintenance of the following items:

A. a record of all enforcement actions taken by an organization for any given time period,

B. a method of tracking and evaluating compliance information,

C. the ability to evaluate specific enforcement activities in terms of their results and local program objectives and

D. the ability to reconcile all compliance statistics with the goals of the Act under the NPDES Program.

Pre-enforcement Evaluation

Pre-enforcement evaluation is the initial evaluation of compliance information to arrange the noncomplying sources in sequence for subsequent enforcement review. The routine pre-enforcement steps should be performed by paraprofessionals with professionals lending guidance as necessary.

In order for paraprofessionals to carry out the pre-enforcement evaluation, a procedural manual is necessary. This manual must clearly outline the following items:

A. the system for tracking and forecasting reporting requirements; for example, a forecast of all progress reports due for the next 30 days,

B. the staff positions responsible for each screening function,

C. the specific guidelines to be utilized by the paraprofessional or administrative person to determine obvious compliance from noncompliance,

D. the Technical Review Criteria used in assigning review priorities to various reports for subsequent evaluation (see Attachment II),

E. the procedures for applying initial response options to identified violations, such as

1. no further action on sources in obvious compliance and the appropriate update of their compliance status made in the source inventory,
2. standard form letter notification of nonactionable violations (not requiring urgent attention and Agency action) in reporting, monitoring or sampling and
3. telephone or form letter inquiry as to the circumstances which mitigate a permittee's status as a violator.

F. the time frames within which an appropriate response will be made to all instances of noncompliance uncovered by this review; for example, nonreceipt of a report will be followed up by a call or letter within ten days,

G. the procedures for executing the initial response, triggering the follow up and closing out the case with appropriate updates in the source inventory,

H. the control procedures for the internal transmittal of violation information and

I. the maintenance of the Violation Summary (The initial review [pre-enforcement evaluation] of incoming information will isolate an instance of possible noncompliance by a permittee. Any instances of deviation from the terms of the permit should be entered on the Violation Summary. This Summary is a mandatory part of each permittee's official record and will be a ready historical reference of noncompliance. The data elements of this Summary are shown in Attachment III, along with information on the form's use.).

Enforcement Evaluation

Following the preliminary screening just described, the file of information on a source in noncompliance is referred to a professional (or trained paraprofessional) for a substantive, technical evaluation.

In cases other than routine violations, a determination must be made on the appropriate level of enforcement action to be taken. This determination should be accomplished by professional technical personnel and legal personnel.

The technical staff should have the primary responsibility for preparing the enforcement action. However, the responsibility for certain aspects of formal case development rests with the legal staff. For each formal enforcement action, there needs to be maximum staff coordination during case assembly.

Guidelines and procedures should be developed to determine the appropriate level of action to be taken regarding specific categories of violations. National guidance on appropriate enforcement responses to specific violations has been developed and is provided as Attachment IV. Upon the assessment of the facts of a specific case, deviations from this guidance may legitimately occur and will be justified in the permanent record. However, this standard guidance must be followed throughout the enforcement evaluation process.

Detailed procedures for the enforcement evaluation must be developed and routinely updated. They should describe clearly the following items:

A. the analytical process by which an enforcement decision is reached,

B. the temporary suspension of cases of questionable significance where it is determined from professional review that the violations fall outside of an immediate action category (For these cases, the appropriate notations should be entered in the Violation Summary.),

C. the time frames for each level of evaluation and decision making,

D. the compilation and preparation of detailed background material for use in formal actions,

E. the control procedures for the internal transmittal of violation information,

F. the organizational level responsible for

   1. completing each phase of this evaluation,
   2. making a decision on the appropriate enforcement response and
   3. initiating the enforcement action,

G. the communication and coordination procedures with other affected agencies, such as State, municipal, or other Federal agencies and

H. the follow up on a permittee's compliance status and close-out of the case with the appropriate update of the information in the permanent file.

Formal Legal Action and Follow-up

This principle is the cutting edge of EMS and begins when the decision has been made to take action under specific sections of Federal and State statutes and/or regulations. This is the point at which the lead role may shift from technical to legal personnel. At this point, the legal element may serve as the contact on all correspondence with affected parties. In any event, a specific point of responsibility for the action should be designated.

Guidance and/or procedures should be established for the following items:

A. the form and substance of the formal action for use by the person who is responsible for its legal and technical sufficiency (The basic elements of the case should be summarized on a form for ready reference, such as the Violation Summary or other brief,),

B. the tracking system for following the progress of initiated actions (follow-up) and determining the compliance status (This system should also be capable of evaluating the effectiveness of the routine procedures used in achieving a return to compliance.),

C. the initiation of further action, especially in cases of default (see Attachment IV, the Enforcement Response Guide) and

D. closing out enforcement actions, followed by the return of the appropriate compliance results through the technical staff to the source inventory.

Compliance Inspections

Compliance inspections are an important and integral part of an enforcement program. Because of limited resources, it is not possible to conduct on-site evaluation of each permittee's facilities every year. To obtain maximum use of limited compliance-monitoring resources, the enforcement program should have the responsibility for initiating and directing routine and special compliance inspections.

An EMS must include criteria and/or procedures for the following items:

A. the identification and ranking of candidates for routine and special compliance inspections.

B. the time frame for submission of reports on the findings of routine or special compliance inspections (For example, a report should be submitted to the Enforcement Division within thirty [30] days of the completion of the investigation.),

C. the use of the standard compliance inspection procedures and report forms provided in the Compliance Evaluation Inspection Manual (see Attachment V) and

D. the feedback system for informing field investigation personnel of enforcement decisions and permit compliance resulting from field surveys.

GUIDE FOR THE WATER ENFORCEMENT NATIONAL DATA BASE (WENDB)

1. Objective

This guide is to provide standards for entering NPDES permit information into the Water Enforcement National Data Base (WENDB).

2. Background

PCS (Permit Compliance System) is a computerized data system which facilitates the monitoring of permits issued under the NPDES program. In its full capacity it acts as an inventory for all applicants who have filed for an NPDES permit. WENDB is a subset of PCS. WENDB is composed of 16 data elements per facility, 11 of which are on the facility level. The remaining 5 data elements deal with compliance schedules and this can be further defined by indicating event '055', final effluent limits attained. Additional PCS data elements are available for specific Regional and State use. They do not have to be maintained as part of WENDB.

3. Guide

Any facility having an NPDES permit or who will be issued one in the future should be entered into WENDB. This includes New Source as well as standard permits. Data relating to location, identification, and the Compliance Schedule Reports (CSR) should be maintained in the system on a current status. See item 6 below for a definition of currentness.

4. Supported Data Elements

WENDB will be used to satisfy some basic reporting requirements in the Formal Planning and Reporting System (FPRS) as well as to support Headquarters identified information needs. The data elements necessary to support this are as follows:

		Major	Minor
o	NPDES Permit Number	x	x
o	Facility Name	x	x
o	SIC Code (1972)	x	x
o	Major Discharge Indicator	x	x
o	City Code (STORET)	x	x
o	County Code (FIPS)	x	x
o	River Basin Code (STORET)	x	x
o	Ownership Code	x	x
o	Permit Issuance Code	x	x
o	Permit Issue Date	x	x
o	Permit Expiration Date	x	x
o	Compliance Schedule Number	x	x
o	Data Source Code	x	x
o	Compliance Event Code	x	1-see
o	Compliance Schedule Date	x	1 belo
o	Compliance Actual Date	x	1

A detailed description of these specific elements can be found in item 7 below.

5. Data Entry

Support of these elements in WENDB can be accomplished by using a variety of independent methods. They can be directly supported by coding and keypunching the data in PCS data entry format. In Regional or State systems the data elements can be identified and converted to PCS format for direct entry into the system. A Region may elect to generate a tape and send it to Headquarters for direct entry providing the data conforms to PCS input specifications. The above mentioned methods do not rule out any other method that a Region may wish to use to enter the required data.

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1 For minor permits the only compliance event required is the "attainment of final operating level" (PCS code 055)

6. Currentness of Data

Accurate reporting necessitates current, acceptable information. Currentness requirements are based on the uses of the data with the most time dependent uses consequently establishing how current the data must be. Management information for major facilities needed by Headquarters to measure progress and predict work load results is a currentness requirement that is quarterly for all data elements and coincides with the reporting requirements of the Formal Reporting System.

The requirement for coding and entering this information is different for major and minor permits. From a national standpoint, majors should be current to the most recent quarter, the same as FPRS. Minor permits should be current to within six months or two quarters.

Therefore, in support of WENDB, major data elements are required to be current through the end of each quarter by the second Thursday of the following month. For instance, all changes, additions and deletions to data values that occurred during the period January 1 through March 31 must be entered and registered in the system by April 14, 1977. This is consistent with the procedures used in the Compliance Data System (CDS). This procedure will benefit Regions by eventually reducing the separate MBO reporting requirements as data from the National data system is passed directly to the FPRS at the end of each quarter.

7. Facility Location and Identification Data

A. NPDES Permit Number - 9 positions
Composed of a two position alpha state code and a seven position numeric identifier. The numeric portion is a special check digit number that can be computer validated. For a listing of valid NPDES numbers refer to the NUMGEN run documentation in the PCS users' library.

B. Facility Name - 120 positions
This field defines the name of the facility as stated in the permit application form.

For sorting purposes it is best to state the actual name followed by modifiers, i.e.
Baltimore, City of
Remington Rand Company, The
This will allow easy National retrievals for compahies with facilities in different Regions.

C. SIC Code - 4 positions
This field represents the Standard Industrial Classification for the facility. For complex permitees this should be the primary SIC code and comments field used to mention secondary codes. The coding structure can be found in the SIC manual for 1972 prepared by the Office of Management and Budget, stock number 4101-006, U.S. Government Printing Office. The field must always be entered as four digits with leading zeros if necessary. Examples:

1. 0112
2. 2141
3. 9661

Any embedded blanks or special characters will cause the field to be rejected.

D. Major Discharge Indicator - 1 position
There can be only two possible entries for this field. A major facility is marked by storing the character 'M'. A minor facility should be left blank.

E. City Code - 5 positions
The STORET city code identification number is used to allow for standarization of city names as well as ease of entry. A separate city master file is maintained for WENDB contributors. When this five digit field is stored then the system will automatically generate:

1. City Name
2. County Code
3. County Name

F. County Code - 3 positions
The County Code is generated automatically when city code is entered. If there is not an existing city code for a facility then county code can be used to establish the location of a facility. The county code uses a different file to generate county name than the city code. If both fields are entered then all information will be pulled from the city master file. In this case the county code would be ignored as part of normal processing. The FIPS county code structure is used.

G. River Basin Code - 6 positions
The STORET system coding convention is used. The complete river basin code is made up of 6 positions. This can be further defined into three 2 position fields. These subsections are defined as:

1. Major Basin
2. Minor Basin
3. Sub Basin

The river basin, coding structure is defined in the STORET user's guide. The full 6 position code should be used whenever possible. Either the 4 position major/minor basin code or the full major/minor/sub basin code will be accepted. Anything less will be rejected.
Examples:
014234
070126
0804
0901
034269

H. Ownership Code - 3 positions
This field defines the exact ownership of a facility. It is a key element for proper facility identification in a national report. The coding structure follows:
PUB - Public
PRI - Private
BPP - Both Public and Private
FED - Federal
STA - State

I. Permit Issuance Code - 4 positions
This code is used to identify the issuing authority for an NPDES permit. It not only shows State and Federal issuance but major/ minor designation as well. Coding:
0901 - Minor Discharge - EPA
0903 - Minor Discharge - STATE
0905 - Major Discharge - STATE
0907 - Major Discharge - EPA

J. Permit Issue Date - 6 positions
This represents the date that the currently effective permit actually was issued. All reporting for Compliance Schedules and Self Monitoring should use this date as a starting point. PCS requires that the date be entered in Year/Month/Day format.
Examples:
751001
740324
Any date with a value earlier than 1971 will be rejected.

K. Permit Expiration Date - 6 positions
This represents the final date as specified in the permit. An application for a new permit should be received six months prior to this date.
Examples:
801001
790418

L. Compliance Schedule Number - 2 positions
This field is used to identify the Compliance schedules contained in the permit. A facility may have several schedules for which it must comply. Schedules are coded in ascending order starting with '01'. If a facility has three schedules with which to comply, three separate schedules should be entered i.e. 01, 02, 03. Each of these schedules will have it's own separate events and reporting requirements.

M. Data Source Code - 4 positions
This field's primary function is for data security. It will lock off each compliance schedule event record from modification by an unauthorized outside source. It is a 4 digit numeric code issued to each region or State by Headquarters. Information about a particular code can be obtained by calling PCS user support at (202) 755-0994.

N. Event Code - 3 positions
In receiving an NPDES permit and by being placed on a construction timetable with a compliance schedule the permittee must periodically report on the status of their construction. This is handled in PCS by using a milestone event code. Each event code corresponds with a particular milestone action in a compliance schedule. A complete list of event codes can be found in the appendix.

O. Compliance Schedule Date - 6 positions
This field represents a due date for a compliance schedule report. It further defines an event by showing when the report is due. The field is entered as Year/Month/Day.
Example:
760115

VIOLATION SUMMARY

The following is a list of the minimum components and their definitions.

I. PROCEDURES FOR MAINTAINING AND USING THE SUMMARY

The Violation Summary is to be used for all violations. The form should be kept current, i.e., information entered as events occur. If Regional procedures do not readily allow this to occur, the Summary should be updated not less than every 30 days.

The form for the Summary must be used. If an ADP system is used to maintain the Summary, the data items appearing on the form must be in the same order on the automated printout. In reviewing the report, the first level supervisor, may sign only the cover sheet of the printout, indicating concurrence with all action (or lack of action) shown on the form. If desired, all entries may be initialed.

The Summary is to be reviewed by a first level supervisor routinely, at least quarterly.

The Summary is to be kept in the official compliance files. This means that if a manual system of updating the form is used, the Summary is to be attached to the official compliance file folder. If the Summary is maintained in an automated data system, the Region may detach the summary information from the printout on each permittee and attach it to the permit file (replacing sheets as information is periodically updated) or maintain a separate computer report in the place where the official compliance files are kept. If this is done, the printout must be readily accesible for use in enforcement evaluation procedures. (Multiple copies of the printout may be necessary to meet the requirement of ready accessibility).

II. COMPONENTS OF THE FORM

NPDES Numbers

Name and Location - This should be the correct facility name as it is entered in the PCS and the location of the facility. It should be sufficiently descriptive so that the reader knows specifically which facility is involved.

Major/Minor Indicator

Municipal/Non-Municipal/Federal/State Indicator

Date of Violation - The month, day and year the violation actually occured. If it is a violation of a monthly or a weekly average, then the date would show only the month and year of the violation. Additionally, for violations shown on DMR's, the date the DMR was due at the regulatory agency should be given in parenthesis. If it is a violation relating to a missing or incomplete report, then it is the date the report was due at the regulatory agency (i.e., the 14th or 28th of the month or five days after exceeding a maximum limit).

Type of Violation - All violations should be entered, even if they are within the screening factors of the Technical Review Criteria or are of such a low priority that no enforcement response is possible with available resources. They should be abbreviated and specific. If there are violations of effluent limits, the specific parameters should be indicated. Suggested abbreviations are:

FEL - Final Effluent Limit
IEL - Interim Effluent Limit
DMR - Discharge Monitoring Report
FP - Final Plans
PP - Preliminary Plans
EP - Engineering Plans
AOC - Award of Contract
AOL - Attainment of Operational Level
FTS - Failure to Submit (or report)
PR - Progress Report

Agency Responses - This should be a sequential list of each response to the particular violation from initial reaction to formal close-out. Example: telephone call, warning letter, Administrative Order, civil referral, etc.

Date of Responses - This should be the month, day and year the response was actually made, e.g., in the case of a telephone call, the date the call was made, in the case of an Administrative Order, the date the order was signed and made effective.

TECHNICAL REVIEW CRITERIA

The Technical Review Criteria serve as a screening device to assure that limited professional resources concentrate on the most significant violations. These criteria are to be used by nonprofessional compliance analysts in the initial screening of Discharge Monitoring Reports and other reports on the quality of NPDES dischargers. Screening based upon the Technical Review Criteria does not establish which deviations from the effluent limitations are violations of the permit or of the Federal Water Pollution Control Act -- all such deviations, unless specifically authorized elsewhere in the permit, are violations. Nor do the criteria excuse relatively minor violations.

The frequency of violations is an important consideration in establishing the need for further review. These criteria apply only to the first occurrence of a violation of one or more of the effluent limited parameters during any four consecutive quarters. Frequent violations are those which occur more often than once in any four consecutive quarters. Thus, frequent violations should be referred for professional review. In addition, if any two of the parameters bearing an asterisk are violated at the same time, the Discharge Monitoring Report should be referred for professional review. If sufficient professional resources are available after addressing the violations that exceed these criteria, they should be directed to violations which fall within the criteria, starting with the majors. Formal enforcement actions, commenced as a result of violations that fall outside the criteria, should address all violations by the permittee, including those that are within the criteria.

As stated above, these criteria do not establish a policy of no enforcement response to violations within the criteria. All effluent violations within the criteria should be noted to the permittee in writing with a warning of legal liability and, where appropriate, a request for explanation.

These criteria apply to all categories of permittees; the only differentiation is between the daily average for major and minor permittees. The criteria are to be applied to both concentrations and mass loading limitations. The daily average is to be applied to the thirty day average or monthly average permit limitation. The daily maximum criteria is to be used for the seven day average value reported by publicly owned treatment works and the daily maximum value reported by other permittees.

TECHNICAL CRITERIA FOR DISCHARGE MONITORING REPORT REVIEW

	SCREENING FACTORS		
PARAMETER	DAILY MAX.	DAILY AVG. (MAJOR)	DAILY AVG. (MINOR)
ARSENIC*	1.75	1.2	1.35
CADMIUM*	1.95	1.35	1.50
CHROMIUM (TOTAL)*	1.7	1.15	1.35
COPPER*	1.5	1.1	1.25
IRON *	1.4	1.1	1.2
MERCURY*	2.0	1.25	1.45
MANGANESE *	1.4	1.1	1.2
NICKEL*	1.7	1.15	1.35
LEAD *	1.9	1.15	1.45
ZINC *	1.6	1.15	1.3
AMMONIA - NITROGEN	1.4	1.1	1.2
NITRATE - NITROGEN	1.8	1.2	1.45
KJELDAHL - NITROGEN	1.7	1.15	1.35
ORTHO PHOSPHATE	1.15	1.05	1.1
TOTAL PHOSPHATE	1.45	1.1	1.2
SURFACTANT	1.25	1.05	1.1
OIL & GREASE	1.3	1.1	1.15
PHENOLS *	1.2	1.05	1.1
CYANIDE *	1.85	1.2	1.4
TOTAL DISSOLVED SOLIDS	1.2	1.05	1.1
SUSPENDED SOLIDS	1.6	1.3	1.5
BOD_5	1.4	1.1	1.2
COD	1.2	1.05	1.1
TEMPERATURE	ABSOLUTE		
pH	ABSOLUTE		

Person Initiating Response - This should be the name of the individual who initiated the particular action. This may be a lower-grade person in the case of a telephone call or a supervisor in the case of an Administrative Order or referral.

Date Due - This should be the date that the permittee is due to respond to the Agency in accordance with the action taken. This could be the date the permittee promised a telephone caller the DMR would be submitted or a date by which compliance is required by an Administrative Order.

Status - This should reflect the permittee's level of compliance during the resolution of the individual case.

Person Reviewing Form - The Violation Summary should be reviewed by a first level supervisor. This may be done after each action is initiated. If not, the major permittees should be reviewed at least quarterly.

Remarks - (Optional) Additional remarks may be added (as needed) across the form between the specific violations.

ENFORCEMENT RESPONSE GUIDE

This is a guide for NPDES enforcement officials to use in the exercise of their enforcement discretion. It serves three main purposes. First, it establishes enforcement responses that are appropriate, both in terms of the severity of action and the application of Agency resources for different generic levels and types of NPDES permit violations. Second, given the resource constraints in the various enforcement units, it assures a relatively uniform application of enforcement responses to comparable levels and types of violations around the country. Finally, it acts as a standard against which an enforcement program can be evaluated.

It should be emphasized that this guide is to be used as an integral part of considering the most appropriate response to a permit violation. Thus, the suggested responses or alternatives may not be the only ones appropriate in achieving compliance. The guide should not be woodenly applied in any particular case. Each violation of an NPDES permit is a violation of the Federal Water Pollution Control Act for which the full panoply of enforcement responses provided in the Act is available. Determining the most appropriate response or set of responses requires consideration of the severity of the violation in terms of the degree of variance from the permit condition, the impact on the environment and the integrity of the NPDES program; the enforcement history of the discharger in terms of past violations and good faith; the impact on other dischargers; the availability of resources within the enforcement unit, the prosecutorial branch of government and the judiciary; the importance of the violation in comparison with other violations that must be dealt with by limited resources, and considerations of fairness and equity.

In any particular case these factors may lead to an enforcement response different from that suggested in the guide. In most cases, it is anticipated that responses to violations will be made within the framework of responses outlined in the guide.

ENFORCEMENT RESPONSE

NOTES:

1. All violations of Administrative Orders will result in judicial action.
2. Judicial actions normally will be preceeded by Administrative Orders.
3. Even minor violations may ultimately result in judicial action where corrective actions are not taken and/or not complied with or ignored.
4. Production is usually considered "controllable".
5. "Warning" letters admonish permittees for past noncompliance and warn of future enforcement consequences if noncompliance continues.
6. "No action" letters state that the agency will take "no action" with regard to certain past, present and/or future noncompliance if certain conditions are met by discharger.

ENFORCEMENT RESPONSE

EFFLUENT LIMITS

NONCOMPLIANCE	CIRCUMSTANCES	RESPONSE
Exceeding Final Limits	Infrequent or isolated minor violation.	"Warning" letter.
Exceeding Final Limits	Infrequent or isolated major violations of single effluent limit.	"Warning" letter, Administrative Order, or judicial action
Exceeding Final Limits	Frequent violations of effluent limits, i.e. those which occur more often than once in any four consecutive quarters.	Administrative Order or judicial action.
Exceeding Final Limits	Within Technical Review Criteria and time frame for its use.	"Warning" letter or request explanation.
Exceeding Final Limits	Varied frequency or continuation.	"Warning" letter or Administrative Order
Exceeding Interim Limits (for discharge under permittee's control)	Results in known environmental damage	Administrative Order or judicial action.
Exceeding Interim Limits (for discharge under permittee's control)	Without known damage.	"Warning" letter, Administrative Order or judicial action.
Exceeding Interim Limits (uncontrolled)	No harmful effects known.	"No action" letter.
Exceeding Interim Limits (uncontrolled)	With substantial environmental damage.	Administrative Order or judicial action.

ENFORCEMENT RESPONSE

REPORTING

NONCOMPLIANCE	CIRCUMSTANCES	RESPONSE
Failure to Report (Routine reports, (DMR's)	Isolated or infrequent	*Phone calls or "Warning" letter. Reports to be submitted immediately.
Failure to report (One-time reports)	Isolated or infrequent	"Warning" letter. Reports to be submitted immediately.
Failure to notify (Compliance or non-compliance with schedule requirement)	Isolated or infrequent	*Phone call or "Warning" letter. Reports to be submitted immediately.
Failure to report or notify	Permittee does not respond to letters, or does not follow-through on verbal or written agreement, or frequent violation.	Administrative Order or judicial action if non-response continues
Failure to notify of effluent limit violation	Known environmental damage results	Administrative Order or judicial action.
Failure to notify of effluent limit violation.	Isolated or infrequent. No known effects	Warning letter
Failure to notify of effluent limit violation.	Continuation	Second warning letter or Administrative Order.
Minor reporting deficiencies	Isolated or infrequent	Warning letter - corrections to be made on next submittal.
Minor reporting deficiencies	Continuation	Administrative Order if continued.
Major or gross reporting deficiencies	Isolated or infrequent	Warning letter - corrections to be made on next submittal.
Major or gross reporting deficiencies	Continuation	Administrative Order

* Phone calls should be followed up with warning letters if reports are not received within agreed upon time frame.

ENFORCEMENT RESPONSE

COMPLIANCE SCHEDULES (Construction phases or planning)

NONCOMPLIANCE	CIRCUMSTANCES	RESPONSE
Missed Interim Date	Will not cause late final date or other interim dates.	"Warning" letter.
Missed Interim Date	Will result in other missed interim dates and/or late final date. Violation for good or valid cause.	"No Action" letter or warning letter (require documentation), or Administrative Order.
Missed Interim Date	Will result in other missed dates. No good or valid cause.	"Warning" letter (first time only), Administrative Order, or judicial action.
Missed Final Date	Compliance likely within 90 days.	"Warning" letter, Follow-up to verify status.
Missed Final Date	Violation for good or valid cause (Strike, act of God, etc.)	Contact permittee, require documentation of good or valid cause. Administrat Order if begin construction date was missed or other delays in construction occurred without good or valid cause.
Missed Final Date	90 days or more outstanding. Failure or refusal to comply without good or valid cause.	Administrative Order or judicial action.
Major or gross deficiencies	Continuation	Administrative Order or judicial action
Failure to install monitoring equipment	Continuation	Administrative Order to begin monitoring (using outside contracts, if necessary) and install equipment.
Reporting False Information		Judicial action.

P. Compliance Actual Date - 6 positions
This field is a feedback mechanism whereby the actual date the compliance schedule report was received is fed back into the system. The PCS report writer can generate exception reports for those events having missing dates. Or, a compliance schedule late report can be generated for those events with overdue actual dates. The field is entered as Year/ Month/Day.
Example:
760201

EVENT CODE DESCRIPTION

EVENT CODE	DESCRIPTION
000	Schedule Description
001	1st Report of Progress
002	2nd Report of Progress
003	3rd Report of Progress
004	4th Report of Progress
005	5th Report of Progress
010	Preliminary Plan Completed
012	Final Plan Submission
015	Final Plan Completed
016	Final Plan Approved
020	Site Acquired
025	Financing Complete, Contract Awarded
030	Begin Construction
035	1st Report Construction Progress
036	2nd Report Construction Progress
037	3rd Report Construction Progress
038	4th Report Construction Progress
039	5th Report Construction Progress
045	End Construction
050	Begin Discharge
051	End Discharge
055	Operational Level Attained
060	Municipal Connection, Submit Contract
061	Municipal Connection, Complete Connection
062	Municipal Connection, Submit Independent Plan
063	Municipal Connection, Complete Independent Plan
070	First Monitoring Report
075	Shutdown Statement
080	Alternate Power Source
085	Bypass Elimination Schedule

Appendix
Page 1
Issue Date 11/73

NPDES VIOLATION SUMMARY

☐ Major
☐ Minor

☐ Municipal
☐ Non-Mun
☐ Federal
☐ State

NPDES No.__________________

Name & Location__________________

DATE OF VIOLATION Mo/Da/Yr	TYPE OF VIOLATION	AGENCY RESPONSES	DATE OF RESPONSES Mo/Da/Yr	PERSON(S) INITIATING RESPONSE	DUE DATE Mo/Da/Yr	STATUS	REVIEWER NAME AND TITLE

Remarks:

(Additional information may be entered across the sheet--between citations of permit violations--to meet local ancillary tracking requirements. Any other pertinent information, such as the rationale for unusual responses, may also be documented in this manner.)

090	Bypass Flow Measuring Device
095	Spill Prevention Plan
100	Sludge Handling Report
110	Combined Sewer Report
115	Infiltration Report
120	Industrial User Report
125	Soil Moisture Monitoring Plan
130	Nutrient Removal Report
135	Compliance Inspection
140	Analytical Methods Report
145	Analytical Quality Control Report
150	Discharge Prevention Plan
155	Operation & Maintenance Report
160	Lng Rnge Overload Pln, Prg Rpt.
165	Rev Sched New Connections
170	Program of Public Notice
175	Bypass Provisions
180	6th Rept of Progress
181	7th Rept of Progress
182	8th Rept of Progress
183	9th Rept of Progress
184	10th Rept of Progress
185	11th Rept of Progress
190	2nd Operational Level Attained
195	Chemical Additives Rept
200	Special Feasibility Study
205	Thermal Study
210	Feedlot Certification Rept
215	Special Study
220	Monitoring Plan
225	Ind Waste Ordnc Promulgation
230	Waste Monitoring Rpt
235	Comb Sew Connection Est Method
240	Comb Sew Operational Plan Impl

245	Initiate Grndwtr Monitoring
250	Permitte Cmpl Plan
255	Permittee Monitoring Plan
260	Alt Sched Selection Completed
265	Notification of Resp Opra
270	14 Day Letters--Impl Plan
275	Poll Char Maj Ctrbg Ind Rep 1
276	Poll Char Maj Ctrbg Ind Rep 2
277	Poll Char Maj Ctrbg Ind Rep 3
278	Poll Char Maj Ctrbg Ind Rep 4
279	Poll Char Maj Ctrbg Ind Rep 5
280	Poll Char Maj Ctrbg Ind Rep 6
281	Poll Char Maj Ctrbg Ind Rep 7
282	Poll Char Maj Ctrbg Ind Rep 8
283	Poll Char Maj Ctrbg Ind Rep 9
284	Poll Char Maj Ctrbg Ind Rep 10
285	Poll Char Maj Ctrbg Ind Rep 11
286	Poll Char Maj Ctrbg Ind Rep 12
287	Poll Char Maj Ctrbg Ind Rep 13
288	Poll Char Maj Ctrbg Ind Rep 14
289	Poll Char Maj Ctrbg Ind Rep 15
290	Poll Char Maj Ctrbg Ind Rep 16
291	Poll Char Maj Ctrbg Ind Rep 17
292	Poll Char Maj Ctrbg Ind Rep 18
293	Poll Char Maj Ctrbg Ind Rep 19
294	Poll Char Maj Ctrbg Ind Rep 20
300	Overflow Monitoring Rept 1
301	Overflow Monitoring Rept 2
302	Overflow Monitoring Rept 3
303	Overflow Monitoring Rept 4
304	Overflow Monitoring Rept 5
305	Overflow Monitoring Rept 6
306	Overflow Monitoring Rept 7

307	Overflow Monitoring Rept 8
308	Overflow Monitoring Rept 9
309	Overflow Monitoring Rept 10
310	Overflow Monitoring Rept 11
311	Overflow Monitoring Rept 12
312	Overflow Monitoring Rept 13
313	Overflow Monitoring Rept 14
314	Overflow Monitoring Rept 15
315	Overflow Monitoring Rept 16
316	Overflow Monitoring Rept 17
317	Overflow Monitoring Rept 18
318	Overflow Monitoring Rept 19
319	Overflow Monitoring Rept 20
330	Regional Reserved Item 1
331	Regional Reserved Item 2
332	Regional Reserved Item 3
333	Regional Reserved Item 4
334	Regional Reserved Item 5
335	Regional Reserved Item 6
340	Submit Study Plan

[illegible]

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NPDES COMPLIANCE INSPECTION REPORT *(Coding Instructions on back of last page)*

TRANSACTION CODE		NPDES	YR MO DA	TYPE	INSPECTOR	FAC TYPE	TIME
☐ 1	S 2	☐☐☐☐☐☐☐☐☐ 3–11	☐☐☐☐☐☐ 12–17	☐ 18	☐ 19	☐ 20	a.m. p.m.

REMARKS

21 ☐☐ 64

☐☐☐☐☐☐ 65–70	ADDITIONAL

SECTION A - Permit Summary

NAME AND ADDRESS OF FACILITY *(Include County, State and ZIP code)*		EXPIRATION DATE ISSUANCE DATE
RESPONSIBLE OFFICIAL	TITLE	PHONE
FACILITY REPRESENTATIVE	TITLE	PHONE

SECTION B - Effluent Characteristics *(Additional sheets attached ________)*

PARAMETER/ OUTFALL		MINIMUM	AVERAGE	MAXIMUM	ADDITIONAL
	SAMPLE MEASUREMENT				
	PERMIT REQUIREMENT				
	SAMPLE MEASUREMENT				
	PERMIT REQUIREMENT				
	SAMPLE MEASUREMENT				
	PERMIT REQUIREMENT				
	SAMPLE MEASUREMENT				
	PERMIT REQUIREMENT				
	SAMPLE MEASUREMENT				
	PERMIT REQUIREMENT				

SECTION C - Facility Evaluation *(S = Satisfactory, U = Unsatisfactory, N/A = Not applicable)*

	EFFLUENT WITHIN PERMIT REQUIREMENTS		OPERATION AND MAINTENANCE		SAMPLING PROCEDURES
	RECORDS AND REPORTS		COMPLIANCE SCHEDULE		LABORATORY PRACTICES
	PERMIT VERIFICATION		FLOW MEASUREMENTS		OTHER:

SECTION D - Comments

SECTION E - Inspection/Review

SIGNATURES	AGENCY	DATE	ENFORCEMENT DIVISION USE ONLY
INSPECTED BY			COMPLIANCE STATUS
INSPECTED BY			☐ COMPLIANCE
REVIEWED BY			☐ NONCOMPLIANCE

EPA FORM 3560-3 (9-77) REPLACES EPA FORM T-51 (9-76) WHICH IS OBSOLETE. PAGE 1 OF 4

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[illegible]	PERMIT NO.

SECTION L - Effluent/Receiving Water Observations *(Further explanation attached ______)*

TFALL NO.	OIL SHEEN	GREASE	TURBIDITY	VISIBLE FOAM	VISIBLE FLOAT SOL	COLOR	OTHER

(Sections M and N: Complete as appropriate for sampling inspections)

SECTION M - Sampling Inspection Procedures and Observations *(Further explanation attached ______)*

☐ GRAB SAMPLES OBTAINED
☐ COMPOSITE OBTAINED
☐ FLOW PROPORTIONED SAMPLE
☐ AUTOMATIC SAMPLER USED
☐ SAMPLE SPLIT WITH PERMITTEE
☐ CHAIN OF CUSTODY EMPLOYED
☐ SAMPLE OBTAINED FROM FACILITY SAMPLING DEVICE

OMPOSITING FREQUENCY ________________ PRESERVATION ________________

MPLE REFRIGERATED DURING COMPOSITING ☐ YES ☐ NO

SAMPLE REPRESENTATIVE OF VOLUME AND NATURE OF DISCHARGE ________________

SECTION N - Analytical Results *(Attach report if necessary)*

EPA Form 3560-3 (9-77)

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PERMIT NO.

ECTION J - Compliance Schedule

MITTEE IS MEETING COMPLIANCE SCHEDULE. ☐ YES ☐ NO ☐ N/A *(Further explanation attached _______)*

CHECK APPROPRIATE PHASE(S):

- ☐ (a) THE PERMITTEE HAS OBTAINED THE NECESSARY APPROVALS FROM THE APPROPRIATE AUTHORITIES TO BEGIN CONSTRUCTION.
- ☐ (b) PROPER ARRANGEMENT HAS BEEN MADE FOR FINANCING *(mortgage commitments, grants, etc.)*.
- ☐ (c) CONTRACTS FOR ENGINEERING SERVICES HAVE BEEN EXECUTED.
- ☐ (d) DESIGN PLANS AND SPECIFICATIONS HAVE BEEN COMPLETED.
- ☐ (e) CONSTRUCTION HAS COMMENCED.
- ☐ (f) CONSTRUCTION AND/OR EQUIPMENT ACQUISITION IS ON SCHEDULE.
- ☐ (g) CONSTRUCTION HAS BEEN COMPLETED.
- ☐ (h) START-UP HAS COMMENCED.
- ☐ (i) THE PERMITTEE HAS REQUESTED AN EXTENSION OF TIME.

ECTION K - Self-Monitoring Program

Part 1 – Flow measurement *(Further explanation attached _______)*

PERMITTEE FLOW MEASUREMENT MEETS THE REQUIREMENTS AND INTENT OF THE PERMIT. DETAILS	☐ YES	☐ NO	☐ N/A
(a) PRIMARY MEASURING DEVICE PROPERLY INSTALLED.	☐ YES	☐ NO	☐ N/A
TYPE OF DEVICE: ☐ WEIR ☐ PARSHALL FLUME ☐ MAGMETER ☐ VENTURI METER ☐ OTHER *(Specify __________*			
(b) CALIBRATION FREQUENCY ADEQUATE. *(Date of last calibration ________________)*	☐ YES	☐ NO	☐ N/A
(c) PRIMARY FLOW MEASURING DEVICE PROPERLY OPERATED AND MAINTAINED.	☐ YES	☐ NO	☐ N/A
(d) SECONDARY INSTRUMENTS *(totalizers, recorders, etc.)* PROPERLY OPERATED AND MAINTAINED.	☐ YES	☐ NO	☐ N/A
(e) FLOW MEASUREMENT EQUIPMENT ADEQUATE TO HANDLE EXPECTED RANGES OF FLOW RATES.	☐ YES	☐ NO	☐ N/A

Part 2 – Sampling *(Further explanation attached _______)*

PERMITTEE SAMPLING MEETS THE REQUIREMENTS AND INTENT OF THE PERMIT. DETAILS	☐ YES	☐ NO	☐ N/A
(a) LOCATIONS ADEQUATE FOR REPRESENTATIVE SAMPLES.	☐ YES	☐ NO	☐ N/A
(b) PARAMETERS AND SAMPLING FREQUENCY AGREE WITH PERMIT.	☐ YES	☐ NO	☐ N/A
(c) PERMITTEE IS USING METHOD OF SAMPLE COLLECTION REQUIRED BY PERMIT. IF NO, ☐ GRAB ☐ MANUAL COMPOSITE ☐ AUTOMATIC COMPOSITE FREQUENCY ________	☐ YES	☐ NO	☐ N/A
(d) SAMPLE COLLECTION PROCEDURES ARE ADEQUATE.	☐ YES	☐ NO	☐ N/A
(i) SAMPLES REFRIGERATED DURING COMPOSITING	☐ YES	☐ NO	☐ N/A
(ii) PROPER PRESERVATION TECHNIQUES USED	☐ YES	☐ NO	☐ N/A
(iii) FLOW PROPORTIONED SAMPLES OBTAINED WHERE REQUIRED BY PERMIT	☐ YES	☐ NO	☐ N/A
(iv) SAMPLE HOLDING TIMES PRIOR TO ANALYSES IN CONFORMANCE WITH 40 CFR 136.3	☐ YES	☐ NO	☐ N/A
(e) MONITORING AND ANALYSES BEING PERFORMED MORE FREQUENTLY THAN REQUIRED BY PERMIT.	☐ YES	☐ NO	☐ N/A
(f) IF (e) IS YES, RESULTS ARE REPORTED IN PERMITTEE'S SELF-MONITORING REPORT.	☐ YES	☐ NO	☐ N/A

Part 3 – Laboratory *(Further explanation attached _______)*

PERMITTEE LABORATORY PROCEDURES MEET THE REQUIREMENTS AND INTENT OF THE PERMIT. DETAILS:	☐ YES	☐ NO	☐ N/A
(a) EPA APPROVED ANALYTICAL TESTING PROCEDURES USED. *(40 CFR 136.3)*	☐ YES	☐ NO	☐ N/A
(b) IF ALTERNATE ANALYTICAL PROCEDURES ARE USED, PROPER APPROVAL HAS BEEN OBTAINED.	☐ YES	☐ NO	☐ N/A
(c) PARAMETERS OTHER THAN THOSE REQUIRED BY THE PERMIT ARE ANALYZED.	☐ YES	☐ NO	☐ N/A
(d) SATISFACTORY CALIBRATION AND MAINTENANCE OF INSTRUMENTS AND EQUIPMENT.	☐ YES	☐ NO	☐ N/A
(e) QUALITY CONTROL PROCEDURES USED.	☐ YES	☐ NO	☐ N/A
(f) DUPLICATE SAMPLES ARE ANALYZED. _______ % OF TIME.	☐ YES	☐ NO	☐ N/A
(g) SPIKED SAMPLES ARE USED. _______ % OF TIME.	☐ YES	☐ NO	☐ N/A
(h) COMMERCIAL LABORATORY USED.	☐ YES	☐ NO	☐ N/A
(i) COMMERCIAL LABORATORY STATE CERTIFIED.	☐ YES	☐ NO	☐ N/A

LAB NAME ________________________________

LAB ADDRESS ________________________________

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Sections F thru L. Complete on all inspections, as appropriate. N/A = Not Applicable	PERMIT NO.

SECTION F - Facility and Permit Background

ADDRESS OF PERMITTEE IF DIFFERENT FROM FACILITY *(Including City, County and ZIP code)*	DATE OF LAST PREVIOUS INVESTIGATION BY EPA/STATE
	FINDINGS

SECTION G - Records and Reports

RECORDS AND REPORTS MAINTAINED AS REQUIRED BY PERMIT. ☐ YES ☐ NO ☐ N/A *(Further explanation attached ______)*

DETAILS:

(a) ADEQUATE RECORDS MAINTAINED OF:			
(i) SAMPLING DATE, TIME, EXACT LOCATION	☐ YES	☐ NO	☐ N/A
(ii) ANALYSES DATES, TIMES	☐ YES	☐ NO	☐ N/A
(iii) INDIVIDUAL PERFORMING ANALYSIS	☐ YES	☐ NO	☐ N/A
(iv) ANALYTICAL METHODS/TECHNIQUES USED	☐ YES	☐ NO	☐ N/A
(v) ANALYTICAL RESULTS *(e.g., consistent with self-monitoring report data)*	☐ YES	☐ NO	☐ N/A
(b) MONITORING RECORDS *(e.g., flow, pH, D.O., etc.)* MAINTAINED FOR A MINIMUM OF THREE YEARS INCLUDING ALL ORIGINAL STRIP CHART RECORDINGS *(e.g. continuous monitoring instrumentation, calibration and maintenance records).*	☐ YES	☐ NO	☐ N/A
(c) LAB EQUIPMENT CALIBRATION AND MAINTENANCE RECORDS KEPT.	☐ YES	☐ NO	☐ N/A
(d) FACILITY OPERATING RECORDS KEPT INCLUDING OPERATING LOGS FOR EACH TREATMENT UNIT.	☐ YES	☐ NO	☐ N/A
(e) QUALITY ASSURANCE RECORDS KEPT.	☐ YES	☐ NO	☐ N/A
(f) RECORDS MAINTAINED OF MAJOR CONTRIBUTING INDUSTRIES *(and their compliance status)* USING PUBLICLY OWNED TREATMENT WORKS.	☐ YES	☐ NO	☐ N/A

SECTION H - Permit Verification

INSPECTION OBSERVATIONS VERIFY THE PERMIT. ☐ YES ☐ NO ☐ N/A *(Further explanation attached ______)*

DETAILS:

(a) CORRECT NAME AND MAILING ADDRESS OF PERMITTEE.	☐ YES	☐ NO	☐ N/A
FACILITY IS AS DESCRIBED IN PERMIT.	☐ YES	☐ NO	☐ N/A
PRINCIPAL PRODUCT(S) AND PRODUCTION RATES CONFORM WITH THOSE SET FORTH IN PERMIT APPLICATION.	☐ YES	☐ NO	☐ N/A
(d) TREATMENT PROCESSES ARE AS DESCRIBED IN PERMIT APPLICATION.	☐ YES	☐ NO	☐ N/A
(e) NOTIFICATION GIVEN TO EPA/STATE OF NEW, DIFFERENT OR INCREASED DISCHARGES.	☐ YES	☐ NO	☐ N/A
(f) ACCURATE RECORDS OF RAW WATER VOLUME MAINTAINED.	☐ YES	☐ NO	☐ N/A
(g) NUMBER AND LOCATION OF DISCHARGE POINTS ARE AS DESCRIBED IN PERMIT.	☐ YES	☐ NO	☐ N/A
(h) CORRECT NAME AND LOCATION OF RECEIVING WATERS.	☐ YES	☐ NO	☐ N/A
(i) ALL DISCHARGES ARE PERMITTED.	☐ YES	☐ NO	☐ N/A

SECTION I - Operation and Maintenance

TREATMENT FACILITY PROPERLY OPERATED AND MAINTAINED. ☐ YES ☐ NO ☐ N/A *(Further explanation attached ______)*

DETAILS:

(a) STANDBY POWER OR OTHER EQUIVALENT PROVISIONS PROVIDED.	☐ YES	☐ NO	☐ N/A
(b) ADEQUATE ALARM SYSTEM FOR POWER OR EQUIPMENT FAILURES AVAILABLE.	☐ YES	☐ NO	☐ N/A
(c) REPORTS ON ALTERNATE SOURCE OF POWER SENT TO EPA/STATE AS REQUIRED BY PERMIT.	☐ YES	☐ NO	☐ N/A
(d) SLUDGES AND SOLIDS ADEQUATELY DISPOSED.	☐ YES	☐ NO	☐ N/A
(e) ALL TREATMENT UNITS IN SERVICE.	☐ YES	☐ NO	☐ N/A
(f) CONSULTING ENGINEER RETAINED OR AVAILABLE FOR CONSULTATION ON OPERATION AND MAINTENANCE PROBLEMS.	☐ YES	☐ NO	☐ N/A
(g) QUALIFIED OPERATING STAFF PROVIDED.	☐ YES	☐ NO	☐ N/A
(h) ESTABLISHED PROCEDURES AVAILABLE FOR TRAINING NEW OPERATORS.	☐ YES	☐ NO	☐ N/A
(i) FILES MAINTAINED ON SPARE PARTS INVENTORY, MAJOR EQUIPMENT SPECIFICATIONS, AND PARTS AND EQUIPMENT SUPPLIERS.	☐ YES	☐ NO	☐ N/A
(j) INSTRUCTIONS FILES KEPT FOR OPERATION AND MAINTENANCE OF EACH ITEM OF MAJOR EQUIPMENT.	☐ YES	☐ NO	☐ N/A
(k) OPERATION AND MAINTENANCE MANUAL MAINTAINED.	☐ YES	☐ NO	☐ N/A
SPCC PLAN AVAILABLE.	☐ YES	☐ NO	☐ N/A
REGULATORY AGENCY NOTIFIED OF BY-PASSING. *(Dates ______ ______)*	☐ YES	☐ NO	☐ N/A
(n) ANY BY-PASSING SINCE LAST INSPECTION.	☐ YES	☐ NO	☐ N/A
(o) ANY HYDRAULIC AND/OR ORGANIC OVERLOADS EXPERIENCED.	☐ YES	☐ NO	☐ N/A

Attached is a list of all AOs for FY 84. Each AO is broken down by month, region and state.

There is one incorrectly coded facility listed under the AOs for Region II, Long Island Duck Farmers Coop under the month of April 1984. The effective date should be 2/29/84. The change has been penciled in and the AO should be counted for February 1984.

Explanation of the violation codes is supplied on the attached page.

GREAT SYSTEM VIOLATION CODES

330	FAILURE TO SUBMIT DMR
332	INADEQUATE DMR
350	FAILURE TO SUBMIT NONCOMPLIANCE NOTICE
500	EXCEEDED EFFLUENT LIMITS
501	INADEQUATE MONITORING
502	DISCHARGED WITHOUT VALID PERMIT
503	IMPROPER O & M
504	UNAUTHORIZED BY-PASS
552	UNAUTHORIZED DISCHARGE
600	OTHER
601	VIOLATION OF PREVIOUS ORDER
602	FAILURE TO MEET 77/07/01
603	SECTION 404 VIOLATION (DREDGE & FILL)
604	PRETREATMENT VIOLATION
605	REQUIRED TO COMPLETE A MUNICIPAL COMPLIANCE PLAN (MCP)
608	SECTION 308 REQUEST FOR INFORMATION
609	ESTABLISHES INTERIM LIMITS
610	ESTABLISHES COMPLIANCE SCHEDULE
611	VIOLATION OF SCHEDULE ESTABLISHED BY PERMIT
612	FAILED TO APPLY FOR PERMIT
613	ESTABLISHES CONSTRUCTION SCHEDULE
614	DMR QUALITY ASSURANCE (QA)
615	COMPOSIT CORRECTION PGM. (CCP)
616	
617	
618	

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                                                THE GREAT SYSTEM                      8:59 SATURDAY, MARCH 24, 1984    1

                                         ALL AOS          FOR FY84 BY MONTH

~~OCT~~ ----------------------------------------- ACTION=AO   YRMO=8310   REGION=01   STATE=RI ------------------------------------------
                                                              (Effective) (Resolved) (Compliance)              (Violations)
  OBS   REGION          NAME                PERMIT      DOCKET      DATE      RDATE    CDATE    SIC      TYPE        V1    V2    V3    V4    V5

   1      01     AMERICAN HOECHST CORP.   RI0000132   84-01     831028                          2865   NON-MUNI    500   001

---------------------------------------------------- ACTION=AO   YRMO=8310   REGION=02   STATE=NJ ------------------------------------------

  OBS   REGION          NAME              PERMIT          DOCKET        DATE     RDATE   CDATE   SIC     TYPE    V1     V2     V3    V4    V5

   2      02     CHERRY HILL TOWNSHIP   NJ0025046   CWA-II-83-31   831028                       4952    MUNI    500    600

---------------------------------------------------- ACTION=AO   YRMO=8310   REGION=03   STATE=PA ------------------------------------------

    OBS  REGION             NAME                     PERMIT        DOCKET        DATE    RDATE  CDATE  SIC    TYPE  V1    V2  V3  V4  V5

     3     03    ALLEGHENY COUNTY SAN.AUTH.;ALC  PA0025984  III-84-002DW  831017               4952  MUNI  604
     4     03    BETHLEHEM AUTHORITY-WASTEWATER  PA0026042  III-84-003DW  831018               4952  MUNI  604

---------------------------------------------------- ACTION=AO   YRMO=8310   REGION=03   STATE=VA ------------------------------------------

    OBS  REGION             NAME                     PERMIT        DOCKET        DATE    RDATE  CDATE  SIC    TYPE  V1    V2  V3  V4  V5

     5     03    UPPER OCCOQUAN SEWAGE AUTH-REG  VA0024988  III-83-072DW  831011               4952  MUNI  604

---------------------------------------------------- ACTION=AO   YRMO=8310   REGION=03   STATE=WV ------------------------------------------

    OBS  REGION  NAME                            PERMIT        DOCKET        DATE    RDATE  CDATE  SIC    TYPE  V1    V2   V3  V4  V5

      6    03    GLENDALE SEWAGE DISPOSAL PLANT  WV0020036  III-83-073DW  831027               4952  MUNI  330
      7    03    RIVESVILLE, TOWN OF             WV0020052  III-83-074DW  831027               4952  MUNI  330
      8    03    CLAY, TOWN OF,-UPPER CLAY #1    WV0020079  III-83-085DW  831027               4952  MUNI  330
      9    03    GLASGOW , TOWN OF               WV0020265  III-83-083DW  831027               4952  MUNI  330
     10    03    PADEN CITY PRIMARY WASTE TREAT  WV0020613  III-83-084DW  831027               4952  MUNI  330
     11    03    BUFFALO CREEK REGIONAL WWTP     WV0030351  III-83-082DW  831021               4952  MUNI  500  600
     12    03    ELIZABETH TOWN OF               WV0061565  III-83-075DW  831027               4952  MUNI  330

---------------------------------------------------- ACTION=AO   YRMO=8310   REGION=04   STATE=FL ------------------------------------------

  OBS  REGION  NAME                           PERMIT         DOCKET          DATE    RDATE    CDATE  SIC    TYPE        V1    V2    V3     V4  V5

   13    04    SANDESTIN UTILITY CO INC       FL          81-012(WSSB)    831025                          NON-MUNI    502
   14    04    SANDESTIN UTILITY CO INC       FL          84-012(WSSB)    831025                          NON-MUNI    502
   15    04    MADISON WWTP                   FL0020281   84-010(WWHP)    831025                  4952    MUNI        602
   16    04    INDIAN SHORES WWTP             FL0021482   84-002(WWHP)    831018                  4952    MUNI        500
   17    04    ATLANTIC BEACH STP             FL0023914   84-007(WWHP)    831021                  4952    MUNI        602   600
   18    04    REGENCY LAKES STP-REG UTIL CO  FL0027391   84-013(WSSB)    831027                  4952    NON-MUNI    500
   19    04    CHIPLEY WATER & SEWER SYSTEM   FL0027570   84-009(WWHP)    831025                  4952    MUNI        602
   20    04    ESCAMBIA CNTY-AVONDALE WTP     FL0031801   84-008(WWHP)    831020                  4952    MUNI        500   602   600
   21    04    FLEETWOOD MHP                  FL0032395   84-017(WSSB)    831027                  6515    NON-MUNI    502   600
   22    04    ALLIGATOR UTIL-PUNTA GORDA     FL0034673   84-001(WSSB)    831013   840221         4941    NON-MUNI    500   502
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                                              THE GREAT SYSTEM                     8:59 SATURDAY, MARCH 24, 1984   2

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------------------------------------------ ACTION=AO   YRMO=8310   REGION=04   STATE=FL ----------------------------------------------

   OBS  REGION           NAME                PERMIT      DOCKET        DATE   RDATE  CDATE  SIC     TYPE     V1   V2   V3  V4  V5

   23     04    JAX ELEC-ST JOHNS RV #1882  FL0037869  84-011(W555)  831021                4911  NON-MUNI  500  600

------------------------------------------ ACTION=AO   YRMO=8310   REGION=04   STATE=KY ----------------------------------------------

OBS    REGION      NAME         PERMIT         DOCKET          DATE      RDATE     CDATE     SIC     TYPE     V1     V2    V3    V4    V5

24       04     AUBURN STP   KY0021202    84-006(WWRP)    831018                           4952    MUNI    500

------------------------------------------ ACTION=AO   YRMO=8310   REGION=06   STATE=TX ----------------------------------------------

 OBS    REGION      NAME       PERMIT       DOCKET       DATE     RDATE    CDATE     SIC       TYPE        V1      V2    V3    V4    V5

 25       06     RHINTECH    TX0053813    VI-83-008    831013                       2821    NON-MUNI     500

------------------------------------------ ACTION=AO   YRMO=8310   REGION=10   STATE=ID ----------------------------------------------

    OBS   REGION        NAME           PERMIT        DOCKET        DATE    RDATE   CDATE   SIC    TYPE   V1    V2   V3   V4   V5

    26      10     WEISER, CITY OF   ID0020290   X83-10-03309   831017                   4952   MUNI   504

------------------------------------------ ACTION=AO   YRMO=8311   REGION=01   STATE=MA ----------------------------------------------
November
    OBS   REGION   NAME                          PERMIT      DOCKET    DATE    RDATE   CDATE   SIC    TYPE   V1    V2   V3   V4   V5

    27      01     SOUTHBRIDGE STP               MA0100901   84-03     831101                  4952   MUNI   604
    28      01     PALMER                        MA0101168   84-04     831101                  4952   MUNI   604
    29      01     MILLERS FALLS VILLAGE         MA0101516   84-02     831103                  4952   MUNI   604

------------------------------------------ ACTION=AO   YRMO=8311   REGION=01   STATE=ME ----------------------------------------------

  OBS    REGION       NAME        PERMIT       DOCKET      DATE     RDATE     CDATE    SIC     TYPE    V1     V2    V3    V4    V5

  30       01     BANGOR WPF   ME0100781    84-05     831123                       4952    MUNI    604

------------------------------------------ ACTION=AO   YRMO=8311   REGION=03   STATE=PA ----------------------------------------------

   OBS  REGION  NAME                              PERMIT     DOCKET            DATE   RDATE  CDATE  SIC   TYPE  V1    V2  V3  V4  V5

   31     03    UPPER MORELAND-HATBORO SEWAGE   PA0025976  III-84-016DW   831110               4952  MUNI  604
   32     03    ALLENTOWN CITY AUTHORITY-WASTE  PA0026000  III-83-090DW   831118               4952  MUNI  604
   33     03    ERIE SEWER AUTH.                PA0026301  III-83-077DW   831107               4952  MUNI  604
   34     03    BUTLER AREA SEWER AUTH-WTR POL  PA0026697  III-83-9-VP    831123               4952  MUNI  500
   35     03    BUTLER AREA SEWER AUTH-WTR POL  PA0026697  III-84-018-DW  831123               4952  MUNI  604
   36     03    MORRISVILLE BOROUGH MUN AUTH-S  PA0026701  III-84-023DW   831128               4952  MUNI  604
   37     03    POTTSTOWN BORO COUNCIL-WWTR,TW  PA0026786  III-84-024DW   831123               4952  MUNI  604
   38     03    GREATER HAZELTON SEWAGE TREAT   PA0026921  III-83-076DW   831110               4952  MUNI  604
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                                              THE SAS SYSTEM                    8:59 SATURDAY, MARCH 24, 1984    3

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--------------------------------------------- ACTION=AO   YRMO=8311   REGION=03   STATE=PA ---------------------------------------------

   OBS  REGION  NAME                             PERMIT       DOCKET        DATE   RDATE  CDATE  SIC   TYPE   V1    V2  V3  V4  V5

   39     03    DELAWARE CTY REGL WTR QUALITY   PA0027103  III-84-009DW  831123                4952  MUNI   604
   40     03    LEBANON CITY AUTHORITY-SEWAGE   PA0027316  III-84-026DW  831123                4952  MUNI   604
   41     03    NEWCASTLE SANITARY AUTHORITY-P  PA0027511  III-83-081DW  831110                4952  MUNI   604
   42     03    KISKI VALLEY WTR POLL.CONTROL   PA0027626  III-84-025DW  831123                4952  MUNI   604
   43     03    UPPER GWYNEDD-TOWAMENCIN MUN.A  PA0039004  III-84-027DW  831123                4952  MUNI   604
   44     03    LANCASTER AREA SEWER AUTHORITY  PA0042269  III-84-011DW  831118                4952  MUNI   604

--------------------------------------------- ACTION=AO   YRMO=8311   REGION=03   STATE=VA ---------------------------------------------

   OBS  REGION  NAME                        PERMIT       DOCKET       DATE   RDATE  CDATE  SIC   TYPE       V1    V2   V3  V4  V5

   45     03    CSX RAILROAD COMPANY        VA        III-84-015DW  831121                     NON-MUNI   603
   46     03    EDWARD LUNN TULL            VA        III-84-10-DW  831108                     NON-MUNI   603
   47     03    SMITHFIELD PACKING CO       VA0002879 III-84-001VW  831123               2011  NON-MUNI   500   350
   48     03    RIVANNA AUTH-MOORES CREEK   VA0025518 III-84-012DW  831118               4952  MUNI       604

--------------------------------------------- ACTION=AO   YRMO=8311   REGION=04   STATE=FL ---------------------------------------------

   OBS  REGION  NAME                             PERMIT      DOCKET          DATE   RDATE  CDATE  SIC   TYPE       V1    V2   V3  V4  V5

   49     04    REICHHOLD CHEMICALS INC          FL         84-030(WSSB)  831117                     NON-MUNI   502
   50     04    MANATEE COUNTY BOARD OF CTY CM   FL         84-036(WKR)   831125                     NON-MUNI   502
   51     04    BEN HILL GRIFFIN CITRUS CO       FL0001201  84-029(WSSB)  831110               2033  NON-MUNI   500
   52     04    PANAMA CITY BEACH STP            FL0021512  84-022(WWRP)  831104               4952  MUNI       602   600
   53     04    SARASOTA WTP                     FL0024791  84-018(WWRP)  831108               4952  MUNI       500
   54     04    LAKE WALES STP                   FL0024379  84-016(WWRP)  831110               4952  MUNI       500   601
   55     04    BREVARD CNTY-SO BEACHES WWTP     FL0026735  84-023(WWRP)  831114               4952  MUNI       502
   56     04    BREVARD CNTY-SO PATRICK WWTP     FL0026743  84-024(WWRP)  831114               4952  MUNI       502
   57     04    PLANTATION ISLES-STP             FL0027367  84-004(WWRP)  831102               4952  MUNI       602
   58     04    LAKELAND-WTP                     FL0027805  84-015(WWRP)  831104               4952  MUNI       502
   59     04    PLANTATION-WTP 1                 FL0027928  84-005(WWRP)  831103               4952  MUNI       602
   60     04    TARPON SPRINGS STP               FL0030886  84-003(WWRP)  831108               4952  MUNI       500   332
   61     04    DELEON SHORES UTIL CO            FL0033146  84-026(WSSB)  831104               4952  NON-MUNI   600
   62     04    CROWN COLONY-DELRAY BEACH        FL0036871  84-020(WSSB)  831104               6513  NON-MUNI   500

--------------------------------------------- ACTION=AO   YRMO=8311   REGION=04   STATE=KY ---------------------------------------------

   OBS  REGION  NAME                             PERMIT      DOCKET          DATE   RDATE  CDATE  SIC     TYPE       V1    V2   V3  V4  V5

   63     04    ADDINGTON BROS MINING-ELDRIDGE   KY0034224  VI-83-752      831122               1211  NON-MUNI   500
   64     04    KY DHR-DANVILLE YOUTH DEV        KY0033901  84-019(WSSB)   831116               8063  NON-MUNI   500   332

--------------------------------------------- ACTION=AO   YRMO=8311   REGION=05   STATE=MI ---------------------------------------------

   OBS   REGION          NAME                PERMIT          DOCKET          DATE    RDATE    CDATE    SIC    TYPE   V1     V2   V3   V4   V5

   65      05     WAYNE CO.-WYANDOTTE     MI0021156     V-W-84-AO-02     831121                      4952   MUNI   601
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------------------------------------------ ACTION=AO   YRMO=8311   REGION=05   STATE=OH ------------------------------------------

   OBS   REGION        NAME            PERMIT         DOCKET        DATE    RDATE   CDATE   SIC    TYPE   V1    V2    V3    V4   V5

   66     05    BEDFORD-CITY OF     OH0024040   V-W-84-AO-04   831129                  4952   MUNI   500   605
   67     05    NORWALK CITY OF     OH0052604   V-W-84-AO-03   831129                  4952   MUNI   500   605
   68     05    BUCYRUS-CITY OF     OH0052922   V-W-84-AO-01   831102                  4952   MUNI   602   601   605

------------------------------------------ ACTION=AO   YRMO=8311   REGION=06   STATE=AR ------------------------------------------

  OBS   REGION   NAME                   PERMIT      DOCKET      DATE    RDATE   CDATE   SIC    TYPE        V1    V2    V3   V4   V5

  69      06     TAYLOR, CITY OF       AR0020044   VI-84-011   831130                  4952   MUNI        500   350
  70      06     ALMA, CITY OF         AR0021466   VI-84-901   831107                  4952   MUNI        604
  71      06     HOWMET CORP           AR0022624   VI-84-009   831129                  3354   NON-MUNI    500   330
  72      06     CARTHAGE, CITY OF     AR0033715   VI-84-802   831130                  4952   MUNI        502

------------------------------------------ ACTION=AO   YRMO=8311   REGION=06   STATE=LA ------------------------------------------

 OBS  REGION  NAME                             PERMIT      DOCKET        DATE    RDATE  CDATE  SIC   TYPE       V1   V2   V3   V4   V5

 73     06    SOUTHERN PACIFIC TRANSPORTATIO  LA          VI-84-602     831118                     NON-MUNI   502  600
 74     06    LOUISIANA POWER & LIGHT-LITTLE  LA0003191   VI-83-185     831103                4911  NON-MUNI   500
 75     06    NATCHITOCHES, CITY OF           LA0020079   VI-83-192     831107                4952  MUNI       500  503
 76     06    USA-FORT POLK                   LA0032221   VI-83-189     831121                9711  FEDERAL    552
 77     06    THIBODAUX, CITY OF              LA0032948   VI-84-005     831107                4952  MUNI       500
 78     06    ST JOHN THE BAPTIST PARISH SD   LA0034487   VI-83-181     831121                4952  MUNI       500  605
 79     06    RUSTON, CITY OF (NORTHSIDE)     LA0036323   VI-84-701     831115                4952  MUNI       500
 80     06    TERREBONNE PARISH POLICE JURY   LA0040207   VI-84-700     831107                4952  MUNI       500
 81     06    ALEXANDRIA, CITY OF (HUDSON BL  LA0041009   VI-84-905     831109                4952  MUNI       604  601
 82     06    SLIDELL, CITY OF (PLANT #1)     LA0047171   VI-83-188     831102                4952  MUNI       503  500  552
 83     06    SLIDELL, CITY OF (PLANT #2)     LA0047180   VI-83-187     831102                4952  MUNI       500  332  503  552
 84     06    SLIDELL, CITY OF (PLANT #2)     LA0047180   VI-83-751     831102                4952  MUNI       500
 85     06    CLARK ACQUISITION INC.          LA0051993   VI-84-1001    831121                2911  NON-MUNI   500  601

------------------------------------------ ACTION=AO   YRMO=8311   REGION=06   STATE=OK ------------------------------------------

    OBS  REGION              NAME                    PERMIT      DOCKET      DATE    RDATE  CDATE  SIC   TYPE  V1   V2   V3  V4  V5

    86     06    MANNFORD, CITY OF (AERATED LAGO  OK0022802   VI-83-184   831107                4952  MUNI  500  350
    87     06    MCALESTER, CITY OF (WEST PLANT)  OK0026093   VI-83-750   831117                4952  MUNI  500
    88     06    MUSKOGEE, CITY OF-WATER POLLUT   OK0029131   VI-83-755   831121                4952  MUNI  500
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---------------------------------------- ACTION=AO   YRMO=8311   REGION=06   STATE=TX ----------------------------------------

  OBS  REGION  NAME                             PERMIT      DOCKET     DATE   RDATE  CDATE  SIC   TYPE      V1   V2   V3   V4  V5

  89     06    BUCKLEY OIL AND CHEMICAL CO      TX          VI-84-001  831121               NON-MUNI  502
  90     06    SAN ANTONIO, CITY OF (RILLING    TX0021342   VI-84-014  831109         4952  MUNI      500  503
  91     06    TERRELL, CITY OF (KINGS CREEK)   TX0022527   VI-83-954  831107         4952  MUNI      604
  92     06    BRA (WACO REGIONAL STP #0002)    TX0026506   VI-84-904  831121         4952  MUNI      604
  93     06    SAN ANTONIO, CITY OF (LEON CRE   TX0052639   VI-84-015  831109         4952  MUNI      500  503
  94     06    SAN ANTONIO, CITY OF (SALADO C   TX0052647   VI-84-016  831109         4952  MUNI      503  500
  95     06    SMITHTECH                        TX0053813   VI-84-008  831116         2821  NON-MUNI  500
  96     06    GREENVILLE, CITY OF              TX0055611   VI-83-190  831110         4952  MUNI      500  503  501
  97     06    BRA (TEMPLE-BELTON REGIONAL)     TX0058378   VI-84-903  831109         4952  MUNI      604  601
  98     06    DENKA CHEMICAL CORP-HOUSTON      TX0084409   VI-83-183  831116         2822  NON-MUNI  500

---------------------------------------- ACTION=AO   YRMO=8311   REGION=08   STATE=SD ----------------------------------------

     OBS   REGION        NAME                 PERMIT      DOCKET    DATE    RDATE   CDATE    SIC    TYPE   V1    V2   V3   V4   V5

      99     08     VERMILLION, CITY OF   SD0020061   83-13     831117                   4952   MUNI   500
     100     08     WATERTOWN, CITY OF    SD0023370   83-14     831117                   4952   MUNI   500
     101     08     HURON-CITY OF         SD0023434   83-15     831117                   4952   MUNI   550

---------------------------------------- ACTION=AO   YRMO=8311   REGION=09   STATE=AZ ----------------------------------------

     OBS  REGION              NAME                PERMIT     DOCKET     DATE   RDATE CDATE  SIC   TYPE  V1   V2   V3  V4  V5

     102    09    NTUA              TUBA CITY  AZ0020290  IX-FY84-1  831118              4952  MUNI  503  504

---------------------------------------- ACTION=AO   YRMO=8311   REGION=10   STATE=AK ----------------------------------------

OBS   REGION          NAME              PERMIT       DOCKET        DATE    RDATE   CDATE   SIC      TYPE     V1    V2   V3   V4   V5

103     10    KODIAK KING CRAB INC   AK0000493   X83-10-06309   831128                  2091   NON-MUNI   504

---------------------------------------- ACTION=AO   YRMO=8311   REGION=10   STATE=ID ----------------------------------------

   OBS   REGION        NAME             PERMIT        DOCKET       DATE    RDATE   CDATE   SIC    TYPE   V1    V2     V3     V4    V5

   104     10    KETCHUM, CITY OF    ID0020281   X83-09-10309   831108                   4952   MUNI   500   600
   105     10    STANLEY, CITY OF    ID0024805   X83-11-01309   831128                   4952   MUNI   504   350    503   330

Dec.----------------------------------- ACTION=AO   YRMO=8312   REGION=01   STATE=MA ----------------------------------------

   OBS   REGION   NAME                              PERMIT      DOCKET    DATE    RDATE   CDATE   SIC   TYPE   V1    V2    V3   V4   V5

   106     01    NEW BEDFORD WTP                    MA0100781   83-06    831230                   4952  MUNI   502   503
   107     01    NORTHAMPTON MUNI TREAT PLANT       MA0101818   84-08    831229                   4952  MUNI   604
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------------------------------------------ ACTION=AO   YRMO=8312   REGION=01   STATE=ME ------------------------------------------

OBS   REGION              NAME                  PERMIT      DOCKET     DATE    RDATE   CDATE   SIC    TYPE   V1    V2   V3   V4   V5

108     01    KENNEBUNK SD-SOUTHWAY RD STP   ME0100277   84-07     831230                   4952   MUNI   500

------------------------------------------ ACTION=AO   YRMO=8312   REGION=02   STATE=NY ------------------------------------------

     OBS  REGION              NAME                  PERMIT      DOCKET     DATE   RDATE  CDATE  SIC   TYPE  V1   V2  V3  V4  V5

     109    02   AUBURN (C) SEWAGE TREATMENT PL  NY0021903  II-83-41  831221                 4952  MUNI  604

------------------------------------------ ACTION=AO   YRMO=8312   REGION=03   STATE=DE ------------------------------------------

    OBS  REGION              NAME                 PERMIT        DOCKET       DATE   RDATE  CDATE  SIC   TYPE  V1   V2  V3  V4  V5

    110    03    WILMINGTON,CITY OF;WILMINGTON  DE0020320  III-83-067DW  831207                 4952  MUNI  604

------------------------------------------ ACTION=AO   YRMO=8312   REGION=03   STATE=PA ------------------------------------------

    OBS  REGION  NAME                             PERMIT        DOCKET       DATE   RDATE  CDATE  SIC   TYPE  V1   V2  V3  V4  V5

    111    03    READING,CITY OF-FRITZ ISLAND -  PA0026549  III-84-029DW  831213                 4952  MUNI  604
    112    03    EAST NORRITON-PLYMOUTH JOINT S  PA0026816  III-84-022DW  831213                 4952  MUNI  604
    113    03    VALLEY FORGE SEWER AUTHORITY    PA0043974  III-84-024DW  831213                 4952  MUNI  604

------------------------------------------ ACTION=AO   YRMO=8312   REGION=03   STATE=WV ------------------------------------------

  OBS  REGION            NAME                 PERMIT       DOCKET       DATE   RDATE  CDATE   SIC   TYPE       V1   V2   V3   V4  V5

  114    03    FMC CORP INORGANIC CHEM DIV  WV0000002  III-84-039DW  831228         840128  2812  NON-MUNI   500
  115    03    MONONGAH, TOWN OF            WV0027324  III-84-021DW  831205                 4952  MUNI       504  332  503

------------------------------------------ ACTION=AO   YRMO=8312   REGION=04   STATE=FL ------------------------------------------

OBS  REGION  NAME                             PERMIT      DOCKET          DATE   RDATE  CDATE   SIC   TYPE       V1   V2   V3   V4   V5

116    04    BAY COUNTY WASTE TRTMNT-PANAMA  FL0002631  84-037(WRSB)   831206         841231  4952  NON-MUNI   500  610
117    04    ORLANDO-L H MCLEOD STP          FL0022144  84-021(WWRP)   831209         870331  4952  MUNI       611  610  609
118    04    UNION OIL JAX I-10 TRUCKSTOP-R  FL0022578  84-053         831229         840401  5541  NON-MUNI   500  601
119    04    CARDINAL VILLAGE MHP            FL0023574  84-052         831229         841230  7033  NON-MUNI   610  500  601
120    04    PINELLAS CO SO CROSS BAYOU STP  FL0028603  84-032(WWRP)   831212         850601  4952  MUNI       611  610  609
121    04    PINELLAS-MCKAY CREEK STP        FL0028011  84-035(WWRP)   831209         861101  4952  MUNI       611  610  609
122    04    LAKE CITY STP                   FL0025968  84-033(WWRP)   831209         860601  4952  MUNI       611  502  610  609
123    04    PERRY STP                       FL0026387  84-034(WWRP)   831209         850301  4952  MUNI       500  610  609
124    04    CENTURY UTIL-W PALM BEACH       FL0035785  84-038(WRSB)   831220         840331  4952  NON-MUNI   611  500
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                                               THE GREAT SYSTEM                    8:59 SATURDAY, MARCH 24, 1984   7

                                       ALL AOS          FOR FY84 BY MONTH

------------------------------------------- ACTION=AO   YRMO=8312   REGION=04   STATE=KY ------------------------------------------

    OBS  REGION  NAME                             PERMIT     DOCKET          DATE    RDATE  CDATE   SIC   TYPE  V1   V2   V3   V4   V5

    125    04    CORBIN STP                       KY0020133  84-042(WWRP)   831221          840615  4952  MUNI  601  604  610
    126    04    MAYSVILLE STP                    KY0020257  84-044(WWRP)   831221          840615  4952  MUNI  604  611  601  610
    127    04    SHELBYVILLE STP                  KY0020427  84-049(WWRP)   831221          840615  4952  MUNI  604  601  611  610
    128    04    VERSAILLES STP                   KY0020821  84-050(WWRP)   831221          840615  4952  MUNI  604  601  611  610
    129    04    PARIS STP                        KY0021090  046(WWRP)      831221          840615  4952  MUNI  604  601  611  610
    130    04    RICHMOND-DREAMING CREEK STP      KY0022845  84-048(WWRP)   831221          840615  4952  MUNI  604  601  611  610
    131    04    HARRODSBURG-STP                  KY0027021  84-043(WWRP)   831221          840615  4952  MUNI  611  601  604
    132    04    HINDMAN-STP                      KY0027685  84-018(WWRP)   831229          841101  4952  MUNI  503  350  610  609
    133    04    PRINCETON STP                    KY0028401  84-047(WWRP)   831221          840601  4952  MUNI  604  601  611  610

------------------------------------------- ACTION=AO   YRMO=8312   REGION=06   STATE=AR ------------------------------------------

    OBS  REGION  NAME                               PERMIT     DOCKET      DATE    RDATE  CDATE   SIC   TYPE  V1   V2   V3   V4  V5

    134    06    NORTH LITTLE ROCK, CITY OF (FI     AR0020320  AI-83-408   831208                 4952  MUNI  500  605  600
    135    06    SEARCY, CITY OF                    AR0021601  VI-84-702   831213                 4952  MUNI  500
    136    06    BLYTHEVILLE, CITY OF (FACILITY     AR0022560  VI-83-711   831210         830501  4952  MUNI  600
    137    06    PINE BLUFF, CITY OF (BOYDS POI     AR0033316  VI-83-106   831214                 4952  MUNI  500  605
    138    06    PINE BLUFF, CITY OF (ARSENAL P     AR0033324  VI-83-105   831214                 4952  MUNI  500  605
    139    06    PINE BLUFF, CITY OF (PORT PLAN     AR0033332  VI-84-018   831214                 4952  MUNI  500  605
    140    06    PINE BLUFF SEWER SYSTEM            AR0033341  VI-84-017   831214                 4952  MUNI  500  605
    141    06    CONWAY, CITY OF (STONE DAM CK      AR0033349  VI-83-177   831212                 4952  MUNI  500  605
    142    06    CONWAY, CITY OF (STONE DAM CK      AR0033359  VI-84-006   831212                 4952  MUNI  500  601
    143    06    EL DORADO, CITY OF (LAGOON #1)     AR0033723  VI-84-401   831223                 4952  MUNI  600
    144    06    HARRISON, CITY OF                  AR0034321  VI-84-902   831202                 4952  MUNI  604

------------------------------------------- ACTION=AO   YRMO=8312   REGION=06   STATE=LA ------------------------------------------

OBS   REGION             NAME                  PERMIT      DOCKET       DATE    RDATE   CDATE   SIC    TYPE   V1    V2    V3    V4   V5

145     06     SHREVEPORT CITY OF (LUCAS)      LA0041394   VI-84-907   831206                   4952   MUNI   604
146     06     HARAHAN, CITY OF                LA0043940   VI-84-408   831213                   4952   MUNI   500   350   600

------------------------------------------- ACTION=AO   YRMO=8312   REGION=06   STATE=NM ------------------------------------------

    OBS  REGION               NAME                   PERMIT     DOCKET     DATE   RDATE  CDATE  SIC   TYPE  V1   V2   V3   V4  V5

    147    06    LAS CRUCES, CITY OF         --2  NM0023311  VI-84-019  831223               4952  MUNI  500  601  600

------------------------------------------- ACTION=AO   YRMO=8312   REGION=06   STATE=OK ------------------------------------------

   OBS  REGION  NAME                             PERMIT      DOCKET      DATE   RDATE  CDATE  SIC   TYPE        V1   V2   V3  V4  V5

   148    06    U S POLLUTION CONTROL INC        OK          VI-84-008  831208                     NON-MUNI    552  600
   149    06    LAWTON, CITY OF-LAWTON STP       OK0035246   VI-83-037  831216               4952  MUNI        500  503
   150    06    CANADIAN PUBLIC WORKS AUTHORITY  OK0035297   VI-84-012  831214               4952  MUNI        330
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                                                    THE GREAT SYSTEM                         8:59 SATURDAY, MARCH 24, 1984    8

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------------------------------------------ ACTION=AO   YRMO=8312   REGION=06   STATE=TX ---------------------------------------------

  OBS  REGION  NAME                            PERMIT     DOCKET      DATE    RDATE  CDATE    SIC   TYPE        V1   V2    V3  V4  V5

  151    06    LAKE CITIES MUNICIPAL UTIL AUT  TX0020354  VI-83-180   831207                  4952  MUNI        500  600
  152    06    TRA (TEN MILE CREEK)            TX0022811  VI-83-407   831206                  4952  MUNI        500  605
  153    06    AMARILLO, CITY OF (RIVER ROAD)  TX0025801  VI-84-908   831209                  4952  MUNI        608  601
  154    06    NUECES COUNTY WCID #0005        TX0096201  VI-84-801   831208                  4952  NON-MUNI    502
  155    06    AUBREY, CITY OF                 TX0096588  VI-84-003   831223                  4952  MUNI        330
  156    06    MONTGOMERY, CITY OF             TX0096693  VI-84-803   831209                  4952  NON-MUNI    502
  157    06    DEVERS, CITY OF                 TX0071510  VI-84-008   831212                  4952  MUNI        330
  158    06    TEXAS MUNICIPAL POWER AG-GIBBO  TX0074438  VI-84-023   831216                  4911  NON-MUNI    600  552
  159    06    CIBOLO CREEK MUN AUTH-RIEDEL R  TX0077232  VI-84-408   831220          840301  4952  MUNI        500  600

------------------------------------------ ACTION=AO   YRMO=8401   REGION=02   STATE=NY ---------------------------------------------

  OBS  REGION  NAME                            PERMIT     DOCKET      DATE    RDATE  CDATE    SIC   TYPE        V1   V2    V3  V4  V5

  160    02    HUDSON FALLS (V) SEWAGE TREATM  NY0022055  II-83-35    840131                  4952  MUNI        601
  161    02    BEACON (C) WASTE TREATMENT PLA  NY0025976  II-83-40    840126          840531  4952  MUNI        500  604
  162    02    TUPPER LAKE (V) SEWAGE TREATMF  NY0029939  II-83-42    840131                  4952  MUNI        601
  163    02    WASSAIC DEV CENTER              NY0098868  II-83-44    840105                  8063  NON-MUNI    330

------------------------------------------ ACTION=AO   YRMO=8401   REGION=03   STATE=PA ---------------------------------------------

  OBS  REGION  NAME                            PERMIT     DOCKET        DATE    RDATE  CDATE   SIC   TYPE  V1   V2    V3  V4  V5

  164    03    CANONSBURG-HOUSTON JOINT AUTHO  PA0025941  III-84-038DW  840105         840630  4952  MUNI  608  610
  165    03    CITY OF JOHNSTOWN               PA0026034  III-84-081DW  840105         840630  4952  MUNI  608  610
  166    03    UPPER MERION TWP. AUTH-TROUT R  PA0026131  III-84-045DW  840120         840315  4952  MUNI  608  610
  167    03    WASHINGTON-EAST WASHINGTON JOI  PA0026212  III-84-042DW  840105         840630  4952  MUNI  608  610
  168    03    LOWER BUCKS COUNTY JT. MUN. AU  PA0026450  III-84-048DW  840120         840420  4952  MUNI  500  610
  169    03    SCRANTON SEWER AUTH.            PA0026492  III-84-043DW  840105         840630  4952  MUNI  608  610
  170    03    SUNBURY CITY MUN AUTH-SWTR TRT  PA0026557  III-84-037DW  840105         840630  4952  MUNI  608  610
  171    03    WEST CHESTER BOROUGH-GOOSE CRF  PA0027031  III-84-33-DW  840105         840330  4952  MUNI  608  610
  172    03    DELAWARE CTY REGL WTR QUALITY   PA0027103  III-84-047DW  840120         840320  4952  MUNI  500  610
  173    03    NEW KENSINGTON CITY MUNICIPAL   PA0027111  III-84-019DW  840105         840731  4952  MUNI, 608  610
  174    03    GRTR POTTSVILLE SEWER AUTH WAT  PA0043885  III-84-031DW  840105         840430  4952  MUNI  608  610
  175    03    MAIDENCREEK TOWNSHIP AUTHORITY  PA0070271  III-84-044DW  840105         840330  4952  MUNI  608  610

------------------------------------------ ACTION=AO   YRMO=8401   REGION=04   STATE=FL ---------------------------------------------

  OBS  REGION  NAME                          PERMIT     DOCKET           DATE    RDATE  CDATE   SIC   TYPE        V1   V2   V3    V4  V5

  176    04    CITY OF MONTICELLO            FL         84-056           840113         850901        NON-MUNI    502  610  500
  177    04    DADE CITY STP                 FL0020273  84-057(WWRP)     840131                 4952  MUNI        500  610  609
  178    04    SHEPARD VANS                  FL0023582  84-059(W883)     840130                 7538  NON-MUNI    612  502
  179    04    MELBOURNE-BEACHSIDE STP       FL0024783  84-025(WWRP)     840103         860101  4952  MUNI        502  613  609
  180    04    SIMMONS MATTRESS COMPANY      FL0033413  84-054(W888)     840104                 2515  NON-MUNI    612  502
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------------------------------------------ ACTION=AO   YRMO=8401   REGION=04   STATE=KY ------------------------------------------

   OBS   REGION        NAME          PERMIT        DOCKET        DATE    RDATE   CDATE    SIC   TYPE   V1    V2    V3   V4   V5

   181     04    GEORGETOWN WTP   KY0020150   84-041(WWRP)   840103            841030   4952   MUNI   611   610

------------------------------------------ ACTION=AO   YRMO=8401   REGION=06   STATE=AR ------------------------------------------

   OBS  REGION  NAME                              PERMIT      DOCKET      DATE   RDATE  CDATE   SIC   TYPE  V1   V2   V3   V4   V5

   182    06    ALMA, CITY OF                     AR0021466   VI-84-025   840116                4952  MUNI  500  504  503  601
   183    06    DE QUEEN, CITY OF                 AR0021733   VI-84-914   840130        840315  4952  MUNI  604
   184    06    CAMDEN, CITY OF                   AR0022365   VI-84-911   840109        840131  4952  MUNI  604  610
   185    06    PINE BLUFF, CITY OF (BOYDS PNT    AR0033316   VI-84-910   840117        840317  4952  MUNI
   186    06    JONESBORO, CITY OF                AR0033654   VI-84-907   840131        850401  4952  MUNI  500  609  605
   187    06    JONESBORO, CITY OF                AR0033654   VI-84-705   840130        840302  4952  MUNI  500  601

------------------------------------------ ACTION=AO   YRMO=8401   REGION=06   STATE=LA ------------------------------------------

   OBS  REGION  NAME                              PERMIT      DOCKET      DATE   RDATE  CDATE   SIC   TYPE  V1   V2   V3   V4   V5

   188    06    BREAUX BRIDGE, TOWN OF            LA0033014   VI-84-021   840120        840301  4952  MUNI  500  501  350
   189    06    JEFFERSON PARISH, (WEST NAPOLE    LA0040771   VI-84-903   840130        840701  4952  MUNI  500  601  605
   190    06    GRETNA, CITY OF                   LA0041262   VI-84-024   840116        840216  4952  MUNI  500  332  503

------------------------------------------ ACTION=AO   YRMO=8401   REGION=06   STATE=NM ------------------------------------------

   OBS  REGION  NAME                              PERMIT      DOCKET      DATE   RDATE  CDATE   SIC   TYPE  V1   V2   V3   V4   V5

   191    06    SANTA FE, CITY OF (SILER RD ST    NM0022284   VI-84-703   840103        840801  4952  MUNI  500  609  610
   192    06    SANTA FE, CITY OF (AIRPORT RD     NM0022292   VI-84-704   840103        840801  4952  MUNI  500  609  610

------------------------------------------ ACTION=AO   YRMO=8401   REGION=06   STATE=OK ------------------------------------------

 OBS   REGION   NAME                          PERMIT      DOCKET      DATE     RDATE   CDATE    SIC    TYPE    V1    V2    V3    V4    V5

 193     06     GUTHRIE, CITY OF              OK0027715   VI-84-710   840130           851001   4952   MUNI    500   609   610
 194     06     ARDMORE, CITY OF (SW STP)     OK0030406   VI-84-708   840130           870201   4952   MUNI    500   609   610
 195     06     ARDMORE, CITY OF (NE STP)     OK0030414   VI-84-709   840130           870201   4952   MUNI    500   609   610

------------------------------------------ ACTION=AO   YRMO=8401   REGION=06   STATE=TX ------------------------------------------

   OBS  REGION  NAME                             PERMIT      DOCKET      DATE   RDATE  CDATE   SIC   TYPE        V1   V2   V3   V4   V5

   196    06    CITY OF CACTUS                   TX          VI-84-605   840131        840302        MUN-MUNI    502
   197    06    PORT ARTHUR, CITY OF (MAIN)      TX0047589   VI-84-915   840130        840229  4952  MUNI        604  601  610
   198    06    MEBLACH CITY OF                  TX0052787   VI-84-027   840116                4952  MUNI        500  610
   199    06    LEWISVILLE, CITY OF              TX0052492   VI-84-904   840111        840430  4952  MUNI        604  610
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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

FEB 24 1984

OFFICE OF
ENFORCEMENT AND
COMPLIANCE MONITORING

Honorable Elliot Levitas
Chairman, Subcommittee on
Investigations and Oversight
Committee on Public Works and Transportation
House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

This letter is in response to part of your letter to the Administrator, dated February 9, 1984, requesting information for the purpose of holding hearings regarding the adequacy of EPA's enforcement of the industrial and municipal wastewater cleanup requirements of the Clean Water Act.

Information you requested included "the number of cases referred to the Department of Justice during the last three fiscal years, and the status and outcome of each case". To respond to this portion of your request, I am enclosing a copy of a computer print-out which lists all Clean Water Act cases referred from EPA to the Department of Justice during fiscal years 1981, 1982 and 1983. These print-outs list the status of the case, the type of ownership of the facility involved (municipal v. industrial), as well as the the Region and State in which the case arises.

A few of the cases listed are not yet concluded or filed. The names of these cases should be considered as enforcement sensitive. These cases are listed on the last three pages of this submission. I ask that you handle the names of these cases in accordance with the procedures set forth in the Memorandum of Understanding with the subcommittee, dated March 22, 1983, regarding other enforcement sensitive documents.

Sincerely yours,

Courtney M. Price
Assistant Administrator for
Enforcement and Compliance Monitoring

Enclosures

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                                  ALL AOS          FOR FY84 BY MONTH

------------------------------------------- ACTION=AO   YRMO=8401   REGION=08   STATE=SD ------------------------------------------

    OBS   REGION           NAME              PERMIT      DOCKET     DATE     RDATE    CDATE     SIC     TYPE    V1     V2    V3    V4    V5

    200     08     HOT SPRINGS- CITY OF    SD0022918   84-01     840124              840630   4952    MUNI    610

------------------------------------------- ACTION=AO   YRMO=8402   REGION=01   STATE=MA ------------------------------------------

   OBS  REGION  NAME                                 PERMIT    DOCKET    DATE    RDATE  CDATE    SIC    TYPE         V1    V2    V3    V4    V5

   201    01    ROSEMAN SILVER CO INC             MA0025925  84-14   840223                   3914  NON-MUNI    500   610
   202    01    WEBSTER D.P.W.                    MA0100439  84-11   840208           860701  4952  MUNI        613   610
   203    01    DUDLEY SEWER DEPT                 MA0100706  84-12   840208           860701  4952  MUNI        609   608   611   610
   204    01    SPRINGFIELD-BONDI ISLAND STP      MA0101613  84-09   840203           840930  4952  MUNI        608
   205    01    CHARLES RIVER PCD                 MA0102598  84-13   840217           840817  4952  MUNI        500   503

------------------------------------------- ACTION=AO   YRMO=8402   REGION=01   STATE=RI ------------------------------------------

    OBS   REGION          NAME              PERMIT      DOCKET     DATE      RDATE    CDATE     SIC     TYPE   V1     V2     V3      V4    V5

    206     01     WEST WARWICK WPCF    RI0100153    84-10     840207             840330    4952    MUNI   500    503    610

------------------------------------------- ACTION=AO   YRMO=8402   REGION=02   STATE=NY ------------------------------------------

   OBS  REGION  NAME                                 PERMIT      DOCKET     DATE   RDATE  CDATE    SIC    TYPE        V1    V2    V3   V4   V5

   207    02    SCOTT PAPER CO                     NY0006050  II-84-04  840222       840401  2621  NON-MUNI   500   611
   208    02    NIAGARA COUNTY SEWER DIST #1       NY0027979  II-84-01  840222               4952  MUNI       604

------------------------------------------- ACTION=AO   YRMO=8402   REGION=03   STATE=PA ------------------------------------------

  OBS  REGION              NAME                      PERMIT       DOCKET        DATE    RDATE  CDATE    SIC    TYPE   V1    V2    V3   V4   V5

  209     03    ADAMSTOWN BOROUGH AUTHORITY OF   PA0021865   III-84-035DN   840223      .    840530   4952   MUNI   608   610

------------------------------------------- ACTION=AO   YRMO=8402   REGION=03   STATE=WV ------------------------------------------

  OBS  REGION  NAME                                  PERMIT        DOCKET        DATE    RDATE  CDATE  SIC    TYPE   V1    V2    V3     V4   V5

  210     03   EAST SEWAGE TRETMENT PLANT, CI    WV0020044   III-84-049DN   840207                4952   MUNI   501   503
  211     03   MCMECHEN, CITY OF                 WV0020141   III-84-054DN   840224                4952   MUNI   501
  212     03   CHESAPEAKE MUNICIPAL SEWAGE TR    WV0020788   III-84-056DN   840228                4952   MUNI   330   501
  213     03   ALDERSON, TOWN OF                 WV0020681   III-84-059DN   840227                4952   MUNI   330   501   503
  214     03   [illegible] PUBLIC SERVICE DISTRICT   WV0027197   III-84-057DN   840227                4952   MUNI   501
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-------------------------------------------- ACTION=AO   YRMO=8402   REGION=04   STATE=FL ------------------------------------------

OBS  REGION  NAME                            PERMIT       DOCKET        DATE    RDATE  CDATE   SIC   TYPE      V1   V2   V3   V4   V5

215    04    CITY OF HOLLYWOOD               FL           84-063(WWHP)  840206         840601        NON-MUNI  604  610
216    04    CITY OF FORT LAUDERDALE         FL           84-064(WWHP)  840206         840601        NON-MUNI  604
217    04    BROWARD COUNTY                  FL           84-065(WWHP)  840207         840601        NON-MUNI  604
218    04    US GYPSUM JAX PLT               FL0001333    84-052(WSSS)  840216                 3275  NON-MUNI  612  502
219    04    GOLD KIST POULTRY LIVE OAK      FL0001465    84-061(WSSS)  840203                 2016  NON-MUNI  500  610
220    04    MIAMI-VIRGINIA KEY WTP          FL0024805    84-046(WWRP)  840215                 4952  MUNI      500
221    04    JAX SUBURBAN UTIL-ROYAL LAKES   FL0026791    84-058(WSSS)  840201                 4952  NON-MUNI  500  501  610
222    04    SPACTIMIS TRAILER PARK,INC      FL0032271    84-051(WSSS)  840210                 7519  NON-MUNI  612  502
223    04    FLEETWOOD MHP                   FL0032395    84-050(WSSS)  840216                 6515  NON-MUNI  612  502
224    04    PRODUCE TERM OF JAX             FL0033405    84-053(WSSS)  840216                 5031  NON-MUNI  612  502
225    04    ORANGE-CO OF FL LABOR CAMP      FL0034517    84-066(WSSS)  840216                 2037  NON-MUNI  612  502  330
226    04    BENTON WOOD MHP                 FL0034568    84-058(WSSS)  840224                 6515  NON-MUNI  612  502
227    04    LOXAHATCHEE RV HFG WWTPSHEFL    FL0034649    84-062(WWRP)  840223         840716  4952  MUNI      611  609
228    04    KEYS FISHERIES-MARATHON         FL0035106    84-054(WSSS)  840216                 5146  NON-MUNI  612  502
229    04    REICHER OIL-PALMETTO            FL0036056    84-067(WSSS)  840216                 5171  NON-MUNI  612
230    04    REICHER OIL-MIAMI               FL0036048    84-057(WSSS)  840221                 5171  NON-MUNI  612  502

-------------------------------------------- ACTION=AO   YRMO=8402   REGION=04   STATE=KY ------------------------------------------

OBS  REGION  NAME                              PERMIT      DOCKET        DATE    RDATE  CDATE   SIC   TYPE      V1   V2   V3   V4   V5

231    04    RUSSELLVILLE STP                  KY0020877   84-048(WWHP)  840210         840615  4952  MUNI      601  604
232    04    LEXINGTON-WEST HICKMAN STP        KY0021491   84-040(WWHP)  840208         840615  4952  MUNI      601  604
233    04    CHIPPER RIDGE CORP-LOUISVILLE     KY0025071   83-326(WSSS)  840207                 4952  NON-MUNI  332
234    04    WHEELWRIGHT STP                   KY0027740   84-040(WWHP)  840217         850131  4952  MUNI      330  501  503  610  609
235    04    CARDINAL MHP                      KY0034917   83-269(WSSS)  840207                 6515  NON-MUNI  332
236    04    WAVERLY SANITATION FAC            KY0034916   83-344(WSSS)  840207                 4952  NON-MUNI  332
237    04    BOONE-AIRE COUNTRY CLUB GARDEN    KY0036017   83-273(WSSS)  840210                 6513  NON-MUNI  330

-------------------------------------------- ACTION=AO   YRMO=8402   REGION=05   STATE=IL ------------------------------------------

  OBS   REGION        NAME               PERMIT       DOCKET         DATE    RDATE   CDATE   SIC    TYPE   V1     V2   V3   V4   V5

  258     05    HINSDALE-BURR RIDGE   IL0022586   V-W-84-AO-06   840210          840730   4952   MUNI   608

-------------------------------------------- ACTION=AO   YRMO=8402   REGION=05   STATE=IN ------------------------------------------

  OBS  REGION               NAME                    PERMIT       DOCKET        DATE   RDATE  CDATE   SIC   TYPE      V1   V2   V3  V4  V5

  239    05    ANACONDA-ERICSSON, WIRE& CABLE   IN0002372   V-W-84-AO-08  840216                3357  NON-MUNI  610  608
  240    05    CITY OF CHARLESTOWN              IN0020508   V-W-84-AO-11  840216                4952  MUNI      610  608
  241    05    UNION CITY MUNICIPAL STP         IN0020982   V-W-84-AO-23  840223                4952  MUNI      610  608
  242    05    SALEM MUNICIPAL STP              IN0021466   V-W-84-AO-09  840216                4952  MUNI      610  608
  243    05    STARLITE CORPORATION             IN0021750   V-W-84-AO-07  840216                3471  NON-MUNI  610  608
  244    05    HAMMOND MUNICIPAL STP            IN0023060   V-W-84-AO-12  840216                4952  MUNI      610  608
  245    05    REDKEY MUNICIPAL STP             IN0020486   V-W-84-AO-21  840204                4952  MUNI      610  608
  246    05    SOUTH BEND MUNICIPAL STP         IN0024520   V-W-84-AO-14  840216         840501 4952  MUNI      608
  247    05    WABASH MUNICIPAL STP             IN0020605   V-W-84-AO-16  840217                4952  MUNI      610  608
  248    05    LAPORTE MUNICIPAL STP            IN0025577   V-W-84-AO-24  840223         840501 4952  MUNI      608  610
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 OBS  REGION  NAME                            PERMIT      DOCKET           DATE    RDATE  CDATE   SIC   TYPE        V1   V2   V3  V4  V5

 249    05    MISHAWAKA MUNICIPAL STP         IN0025666   V-W-84-AO-19     840221         840501  4952  MUNI        604  610
 250    05    LAFAYETTE MUNICIPAL STP         IN0032468   V-W-84-AO-18     840216                 4952  MUNI        614  608
 251    05    LAFAYETTE MUNICIPAL STP         IN0032468   V-W-84-AO-15     840217         840501  4952  MUNI        604
 252    05    COLUMBUS MUNICIPAL STP          IN0032573   V-W-84-AO-22     840208         840501  4952  MUNI        604
 253    05    ELWOOD MUNICIPAL STP            IN0032719   V-W-84-AO-20     840221         840501  4952  MUNI        604
 254    05    EVANSVILLE W MUNICIPAL STP      IN0032956   V-W-84-AO-27     840227                 4952  MUNI        614  608
 255    05    SPEEDWAY MUNICIPAL STP          IN0032972   V-W-84-AO-25     840223         840501  4952  MUNI        604  610
 256    05    EVANSVILLE E MUNICIPAL STP      IN0033073   V-W-84-AO-27     840227                 4952  MUNI        614  608
 257    05    CONRAIL DIESEL TERMINAL         IN0050717   V-W-84-AO-11     840216                 3783  NON-MUNI    614  608

------------------------------------------ ACTION=AO   YRMO=8402   REGION=05   STATE=MI ------------------------------------------

 OBS  REGION          NAME               PERMIT      DOCKET          DATE    RDATE  CDATE   SIC   TYPE        V1   V2   V3   V4   V5

 258    05    ARONSON MFG PLATING CO     MI0000825   V-W-84-AO-18    840217                 3471  NON-MUNI    614  608
 259    05    MASON WWTP                 MI0020435   V-W-84-AO-05    840209         840331  4952  MUNI        611  500  610
 260    05    GENESEE CO. NO. 2          MI0022977   V-W-84-AO-26    840227         840830  4952  MUNI        608  500  504
 261    05    PAW PAW LAKE WWTP          MI0023779   V-W-84-AO-28    840227                 4952  MUNI        608  500  614  330

------------------------------------------ ACTION=AO   YRMO=8402   REGION=06   STATE=AR ------------------------------------------

 OBS  REGION  NAME                                   PERMIT      DOCKET       DATE    RDATE  CDATE   SIC   TYPE  V1   V2   V3   V4  V5

 262    06    FAYETTEVILLE, CITY OF                  AR0020010   VI-83-756    840216         870301  4952  MUNI  609  610
 263    06    SILOAM SPRINGS, CITY OF                AR0020273   VI-84-906    840213         840315  4952  MUNI  604
 264    06    BENTONVILLE, CITY OF                   AR0022403   VI-84-920    840213         840301  4952  MUNI  604
 265    06    BLYTHEVILLE, CITY OF (FACILITY         AR0022578   VI-84-409    840228                 4952  MUNI  500  609  605
 266    06    BLYTHEVILLE, CITY OF (FACILITY         AR0022586   VI-84-820    840228                 4952  MUNI  500

------------------------------------------ ACTION=AO   YRMO=8402   REGION=06   STATE=LA ------------------------------------------

 OBS  REGION          NAME               PERMIT      DOCKET       DATE    RDATE  CDATE   SIC   TYPE        V1   V2   V3   V4  V5

 267    06    INTERNATIONAL PAPER CO     LA          VI-84-607    840208         840508        NON-MUNI    502  609  610
 268    06    GONZALES, TOWN OF          LA0038717   VI-84-835    840222                 4952  MUNI        500  350  503

------------------------------------------ ACTION=AO   YRMO=8402   REGION=06   STATE=OK ------------------------------------------

 OBS  REGION  NAME                             PERMIT      DOCKET       DATE    RDATE  CDATE   SIC   TYPE  V1   V2   V3   V4  V5

 269    06    HARTSHORNE, TOWN OF              OK0022861   VI-84-843    840217         840417  4952  MUNI  614
 270    06    TULSA, CITY OF (NORTHSIDE)       OK0026221   VI-84-811    840217                 4952  MUNI  500  609  610
 271    06    ELK CITY, CITY OF                OK0029866   VI-84-807    840206         840306  4952  MUNI  563  601
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                                         ALL AOS          FOR FY84 BY MONTH

------------------------------------------------ ACTION=AO   YRMO=8402   REGION=06   STATE=TX ------------------------------------------------

OBS  REGION  NAME                                PERMIT     DOCKET       DATE    RDATE  CDATE   SIC   TYPE       V1   V2   V3   V4   V5

272    06    USAF-KELLEY AFB-SAN ANTONIO         TX0000671  VI-84-030    840206         840306  3471  FEDERAL    500  332  503
273    06    LONGVIEW, CITY OF (MAIN)            TX0022217  VI-84-013    840221         840415  4952  MUNI       604
274    06    LUFKIN, CITY OF                     TX0024309  VI-84-036    840204                 4952  MUNI       503
275    06    LUFKIN, CITY OF                     TX0024309  VI-84-037    840209         840415  4952  MUNI       500  503
276    06    PARIS, CITY OF                      TX0027910  VI-84-308    840217         840701  4952  MUNI       500  504  600  601
277    06    PASADENA, CITY OF (VINCE BAYOU      TX0047902  VI-84-033    840207         840407  4952  MUNI       500  504  503  350  610
278    06    FT BEND COUNTY MUD NO. 13           TX0058114  VI-84-016    840217                 4953  NON-MUNI   604  610
279    06    WHITNEY, CITY OF                    TX0070996  VI-84-010    840217                 4952  MUNI       501  612  503  350  610
280    06    GRACE,WR & CO-DEER PARK             TX0089967  VI-84-1002   840221                 2899  NON-MUNI   500  501

------------------------------------------------ ACTION=AO   YRMO=8402   REGION=07   STATE=MO ------------------------------------------------

     OBS  REGION           NAME                      PERMIT     DOCKET     DATE   RDATE  CDATE  SIC   TYPE       V1   V2  V3  V4  V5

     281    07    MID-AMERICA DAIRYMEN CABOOL   MO0002828  84-W-002  840229                2023  NON-MUNI   614
     282    07    FARMINGTON CITY OF  STP       MO0040312  84-W-004  840229                4952  MUNI       614

------------------------------------------------ ACTION=AO   YRMO=8402   REGION=07   STATE=NE ------------------------------------------------

 OBS    REGION      NAME        PERMIT      DOCKET      DATE      RDATE     CDATE     SIC      TYPE    V1      V2     V3     V4     V5

 283      07      WAYNE STP   NE0033111   84-W-003    840229                          4952     MUNI    614

------------------------------------------------ ACTION=AO   YRMO=8402   REGION=08   STATE=UT ------------------------------------------------

OBS    REGION         NAME            PERMIT       DOCKET      DATE       RDATE      CDATE      SIC       TYPE     V1       V2       V3      V4      V5

284      08      OREM CITY CORP   UT0020915     84-02       840216                            4952      MUNI     500      609

------------------------------------------------ ACTION=AO   YRMO=8402   REGION=09   STATE=CA ------------------------------------------------

    OBS  REGION               NAME                    PERMIT      DOCKET      DATE   RDATE  CDATE   SIC   TYPE  V1   V2   V3   V4  V5

    285    09    L.A. CNTY SAN. DIST.JOINT WPCP  CA0053813  IX FY-84-2  840214         840701  4952  MUNI  552  602  604

------------------------------------------------ ACTION=AO   YRMO=8403   REGION=01   STATE=MA ------------------------------------------------

OBS   REGION              NAME                PERMIT      DOCKET    DATE     RDATE    CDATE    SIC      TYPE      V1    V2     V3    V4    V5

286     01     NEW ENG POWER-BRAYTON PT   MA0003654    84-19     840301             841001   4911   NON-MUNI   500   610

------------------------------------------------ ACTION=AO   YRMO=8403   REGION=02   STATE=NY ------------------------------------------------

    OBS  REGION               NAME                    PERMIT      DOCKET     DATE   RDATE  CDATE   SIC   TYPE  V1   V2   V3  V4  V5

    287    02    HERKIMER (V) WATER POLLUTION C  NY0020886   II-84-06   840301         840501  4952  MUNI  500  600
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                                   THE GREAT SYSTEM                    8:59 SATURDAY, MARCH 24, 1984   18

                         ALL AOS          FOR FY84 BY MONTH

------------------------------------------- ACTION=AO   YRMO=8403   REGION=04   STATE=KY -------------------------------------------

    OBS   REGION      NAME          PERMIT         DOCKET          DATE    RDATE   CDATE   SIC    TYPE   V1    V2    V3     V4   V5

    288     04    MOREHEAD STP   KY0047431   84-065(W-AP)   840305                   4952   MUNI   500   530   600

------------------------------------------- ACTION=AO   YRMO=8403   REGION=05   STATE=IL -------------------------------------------

  OBS  REGION  NAME                              PERMIT      DOCKET          DATE    RDATE  CDATE   SIC   TYPE  V1   V2    V3  V4  V5

  289    05    DANVILLE SAN. DIS.                IL0020788   V-W-84-AO-40    840301         840518  4952  MUNI  604  610
  290    05    KANKAKEE SWG TRMT PLT             IL0021768   V-W-84-AO-43    840301         840518  4952  MUNI  604  610
  291    05    ST. CHARLES                       IL0022705   V-W-84-AO-34    840301         840518  4952  MUNI  604  610
  292    05    WEST CHICAGO STP                  IL0023809   V-W-84-AO-36    840301         840518  4952  MUNI  604  610
  293    05    ITASCA STP                        IL0026280   V-W-84-AO-42    840301         840518  4952  MUNI  604  610
  294    05    BELVIDERE STP                     IL0027685   V-W-84-AO-39    840301         840518  4952  MUNI  604  610
  295    05    BLOOMINGTON-NORMAL S.D.           IL0027731   V-W-84-AO-38    840301         840518  4952  MUNI  604  610
  296    05    DOWNERS GROVE SAN DIST            IL0028380   V-W-84-AO-41    840301         840518  4952  MUNI  604  610
  297    05    LA SALLE MUNICIPAL SEWAGE TRMT    IL0029424   V-W-84-AO-44    840301         840518  4952  MUNI  604  610
  298    05    MACOMB SWG. TRMT. PLT.            IL0029688   V-W-84-AO-45    840301         840518  4952  MUNI  604  610
  299    05    MARION SOUTHEAST TRICKLING PLT    IL0029734   V-W-84-AO-29    840301         840518  4952  MUNI  604  610
  300    05    QUINCY WWTP                       IL0030503   V-W-84-AO-32    840301         840518  4952  MUNI  604  610
  301    05    PERU STP                          IL0030660   V-W-84-AO-31    840301         840518  4952  MUNI  604  610
  302    05    ROCHELLE STP                      IL0030741   V-W-84-AO-33    840301         840518  4952  MUNI  604  610
  303    05    SPRING VALLEY-CITY OF             IL0031216   V-W-84-AO-35    840301         840518  4952  MUNI  604  610
  304    05    WHEATON SANT DIST TRMT PLT        IL0031739   V-W-84-AO-37    840301         840518  4952  MUNI  604  610
  305    05    OLNEY STP                         IL0048755   V-W-84-AO-30    840301         840518  4952  MUNI  604  610

------------------------------------------- ACTION=AO   YRMO=8403   REGION=05   STATE=IN -------------------------------------------

  OBS   REGION          NAME              PERMIT         DOCKET         DATE    RDATE   CDATE    SIC    TYPE    V1    V2    V3    V4   V5

  306     05    LINTON MUNICIPAL STP   IN0020575   V-W-84-AO-46   840305          840705   4952   MUNI   500   503   610

------------------------------------------- ACTION=AO   YRMO=8403   REGION=05   STATE=OH -------------------------------------------

    OBS  REGION              NAME                      PERMIT      DOCKET        DATE    RDATE  CDATE   SIC   TYPE  V1   V2   V3    V4  V5

    307    05    LAKE COUNTY-MADISON SWG TRMT P   OH0030790   V-W-84-AO-47   840305          840701  4952  MUNI  500  605  610

------------------------------------------- ACTION=AO   YRMO=8403   REGION=06   STATE=AR -------------------------------------------

    OBS  REGION               NAME                      PERMIT      DOCKET      DATE   RDATE  CDATE  SIC     TYPE      V1   V2  V3  V4  V5

    308    06    TOSCO CORPORATION REFINERY - (  AR0000647   VI-84-044   840302                 2911  NON-MUNI  500

------------------------------------------- ACTION=AO   YRMO=8403   REGION=06   STATE=LA -------------------------------------------

   OBS   REGION            NAME              PERMIT    DOCKET       DATE    RDATE   CDATE     SIC     TYPE       V1    V2    V3   V4   V5

   309     06    PETRO PROCESSORS, INC.     LA     VI-84-068    840305           840601           NON-MUNI   552   502
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                                                  THE GREAT SYSTEM                         8:59 SATURDAY, MARCH 24, 1984   15

                                          ALL AOS          FOR FY84 BY MONTH

------------------------------------------ ACTION=AO   YRMO=8403   REGION=06   STATE=TX ------------------------------------------

   OBS  REGION  NAME                              PERMIT     DOCKET      DATE    RDATE  CDATE   SIC   TYPE  V1   V2   V3   V4  V5

   310   06    N MEMORIAL MUD                     TX0021512  VI-84-039  840305                  4952  MUNI  500  350  501
   311   06    HARLINGEN, CITY OF (STP #0001)     TX0047937  VI-83-914  840311                  4952  MUNI  604
   312   06    CORSICANA, CITY OF (STP #0002)     TX0056731  VI-84-918  840305         840430  4952  MUNI  604

                                                                    8402
------------------------------------------ ACTION=AO   YRMO=~~8403~~   REGION=02   STATE=NY ------------------------------------------

/  OBS  REGION            NAME                    PERMIT      DOCKET     DATE    RDATE  CDATE  SIC      TYPE     V1   V2   V3   V4  V5

   313   02    LONG ISLAND DUCK FARMERS COOP  NY0004898  II-84-05  ~~840307~~                 2011  NON-MUNI  501  500  600
                                                                    840229
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                                             QUICK LOOK REPORT
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  02/17/84                                 ENFORCEMENT DOCKET SYSTEM                                    PAGE     1
                                CONFIDENTIAL REPORT FOR EPA INTERNAL USE ONLY
                           CURRENT STATUS OF ALL CWA CASES REFERRED TO DOJ FY81 - FY83,
                           WHICH HAVE SINCE BEEN FILED IN COURT SORTED BY REGION, STATE.
..............................................................................................................................
STAT DESCR CASE NAME                       S  R  T   CASE  M   TYPE OFFEN      TO DOJ   FILED    CONCL    RESULT DESCR     ASSESSED
                                           T  E  Y         E
                                           A  G  P         D
                                           T  N  C         V
FILED......CARTERET, BOROUGH OF............NJ.02.CIV.CWA...WAT.MUNICIPAL.....06/04/81.07/02/81...................................
FILED      PERTH AMBOY, CITY OF            NJ 02 CIV CWA   WAT MUNICIPAL     06/04/81 07/02/81
CONCLUDED  CHELSEA TERM/POSITIVE CHEM      NY 02 CIV CWA   WAT               09/21/81 01/15/82 03/03/83 LITIG-W/PLTY        $22,500
CONCLUDED  JONES&LAUGHLIN-PITTSB           PA 03 CIV CWA   WAT               01/06/81 01/06/81 03/25/81 CONS DC N/PLTY
CONCLUDED  JONES&LAUGHLIN-ALIQUI           PA 03 CIV CWA   WAT PRIVATE, IND  01/06/81 01/06/81 03/25/81 CONS DC N/PLTY
CONCLUDED  SHAEFFER,WM/HOY,WM              PA 03 CIV CWA   WAT               02/03/81 07/30/81 05/25/83 CONS DC N/PLTY
CONCLUDED  BETHLEHEM MINES-RANV            PA 03 CIV CWA   WAT PRIVATE, IND  08/20/81 12/23/82 05/10/83 CONS DC N/PLTY
CONCLUDED  TULL, EDWARD LOND               VA 03 CIV CWA   WAT               04/10/81 07/02/81 09/28/83 LITIG-W/PLTY       $325,000
FILED      UNION CARBIDE                   WV 03 CIV CWA   WAT PRIVATE, IND  01/23/81 04/22/81
CONCLUDED  JIM WALTER RESOURCES            AL 04 CIV CWA   WAT PRIVATE, IND  02/10/81 06/18/81 07/13/82 CONS DC W/PLTY      $60,000
CONCLUDED  TAMPA EL-HOOKERS PT             FL 04 CIV CWA   WAT PRIVATE, IND  01/30/81 05/18/83 05/18/83 CONS DC W/PLTY      $15,000
CONCLUDED  AUCO METALS CO INC              FL 04 CIV CWA   WAT PRIVATE, IND  02/04/81 03/11/83 03/16/83 CONS DC W/PLTY      $15,000
CONCLUDED  LTC COAL DEV CORP               KY 04 CIV CWA   WAT               03/19/81 10/30/81 12/29/81 CONS DC W/PLTY      $60,000
CONCLUDED  ALCOA                           TN 04 CIV CWA   WAT               04/10/81 03/29/83 03/30/83 CONS DC W/PLTY      $25,000
CONCLUDED  [illegible] CORP.               [illegible] 05 CIV CWA WAT PRIVATE, IND 12/04/81 11/04/81 01/31/83 CONS DC W/PLTY $10,000
CONCLUDED  BATON ROUGE, CITY&PA            LA 06 CIV CWA   WAT MUNICIPAL     01/05/81 11/23/82 01/07/83 CONS DC W/PLTY     $100,000
CONCLUDED  TEMPLE-EASTEX INC               TX 06 CIV CWA   WAT PRIVATE, IND  02/12/81 04/08/81 07/20/83 CONS DC W/PLTY      $50,000
CONCLUDED  COASTAL STATES PETRO            TX 06 CIV CWA   WAT               04/16/81 07/31/81 06/15/83 CONS DC W/PLTY      $20,000
CONCLUDED  PIMA CNTY-[illegible]           AZ 09 CIV CWA   WAT COUNTY        12/15/80 06/03/81 07/13/82 CONS DC W/PLTY
FILED      [illegible]                     CA 09 CIV CWA   WAT PRIVATE, IND  10/20/80 10/21/80
CONCLUDED  [illegible] MASSEY              ID 10 CIV CWA   WAT PRIVATE, IND  12/11/80 02/27/81 07/26/83 LITIG-NO PLTY
                                                     CWA

   21 CASES    FOR FISCAL YEAR OF DATE TO DOJ     = 81
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                                                        QUICK LOOK REPORT
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 02/17/84                                     ENFORCEMENT DOCKET SYSTEM                                          PAGE:    2
                                     CONFIDENTIAL REPORT FOR EPA INTERNAL USE ONLY
                              CURRENT STATUS OF ALL CWA CASES REFERRED TO DOJ: FY81 - FY83,
                              WHICH HAVE SINCE BEEN FILED IN COURT: SORTED BY REGION, STATE.
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STAT DESCR CASE NAME                          S  R  T   CASE  M   TYPE OWNER     TO DOJ   FILED    CONCL    RESULT DESCR   ASSESSED
                                              T  E  Y         E
                                              A  G  P         D
                                              T  N  C         V
*************************************************************************************************************************************
FILED      INTERCEPTOR AVIATION               NH 01 CIV CWA   WAT                07/22/82 07/28/82
FILED      P.R. AQUED.-ISABELLA               PR 02 CIV CWA   WAT DISTRICT       06/15/82 01/19/83
                                                        CWA       DISTRICT
                                                        CWA       DISTRICT
                                                                  DISTRICT
                                                                  DISTRICT
                                                                  DISTRICT
                                                                  DISTRICT
                                                                  DISTRICT
                                                                  DISTRICT
                                                                  DISTRICT
                                                                  DISTRICT
                                                                  DISTRICT
                                                                  DISTRICT
                                                                  DISTRICT
                                                                  DISTRICT
                                                                  DISTRICT
                                                                  DISTRICT
FILED      WYOMING VALLEY SANIT               PA 03 CIV CWA   WAT MUNICIPAL      09/30/82 05/03/83
CONCLUDED  GRIFFIN L.                         WV 03 CIV CWA   WAT                05/25/82 08/26/82 11/19/82 CONS DC W/PLTY     $1,000
CONCLUDED  QUAKER STATE OIL REF               WV 03 CIV CWA   WAT PRIVATE, IND   06/16/82 05/05/83 07/07/83 CONS DC W/PLTY
CONCLUDED  NEW MARTINSVILLE STP               WV 03 CIV CWA   WAT MUNICIPAL      07/01/82 06/08/83 12/28/83 CONS DC W/PLTY
CONCLUDED  JERSEY MINIERE ZINC                TN 04 CIV CWA   WAT PRIVATE, IND   12/04/81 03/05/82 03/09/82 CONS DC W/PLTY    $15,000
FILED      OIL SOUTHERN                       TN 04 CIV CWA   WAT                08/06/82 11/15/82
FILED      ROBERT LEWIS                       TN 04 CIV CWA   WAT                08/17/82 11/26/82
FILED      OLIN CHEMICAL                      MI 05 CIV CWA   WAT PRIVATE, IND   05/14/82 01/17/83
FILED      CONRAIL & LOWER LAKE               OH 05 CIV CWA   WAT PRIVATE, IND   06/30/82 10/13/82
CONCLUDED  FORT SMITH                         AR 06 CIV CWA   WAT MUNICIPAL      07/08/82 04/27/83 06/20/83 CONS DC W/PLTY   $100,000
CONCLUDED  CITIES SERVICE                     LA 06 CIV CWA   WAT                07/13/82 05/27/83 06/19/83 CONS DC W/PLTY   $200,000
FILED      TALLULAH,CITY OF                   LA 06 CIV CWA   WAT MUNICIPAL      08/18/82 05/13/83
FILED      ST. BERNARD PARISH                 LA 06 CIV CWA   WAT COUNTY         08/26/82 06/24/83
CONCLUDED  ROSWELL, CITY OF                   NM 06 CIV CWA   WAT MUNICIPAL      07/14/82 05/31/83 06/03/83 CONS DC W/PLTY    $20,000
FILED      TULSA MINGO-HAIKY CRK              OK 06 CIV CWA   WAT MUNICIPAL      06/02/82 08/23/82
CONCLUDED  DIAMOND SHAMROCK                   TX 06 CIV CWA   WAT PRIVATE, IND   10/16/81 01/11/83 06/13/83 CONS DC W/PLTY    $10,000
CONCLUDED  BORDEN, INC.                       TX 06 CIV CWA   WAT                06/30/82 01/21/83 01/24/83 CONS DC W/PLTY   $100,000
CONCLUDED  VERNON-CITY-CELANESE               TX 06 CIV CWA   WAT PRIVATE, IND   08/23/82 06/23/83 09/04/83 CONS DC W/PLTY    $65,000
                                                                  MUNICIPAL
CONCLUDED  TEXAS CITY REFINING                TX 06 CIV CWA   WAT                09/13/82 06/27/83 09/27/83 CONS DC W/PLTY    $50,000
FILED      NOEL WATER CO                      MO 07 CIV CWA   WAT                03/15/82 07/27/83                             $5,000
FILED      IMPERIAL UTILITIES C               MO 07 CIV CWA   WAT                09/16/82 08/23/83
CONCLUDED  RICHFIELD, CITY OF                 UT 08 CIV CWA   WAT MUNICIPAL      09/21/82 01/18/83 02/18/83 CONS DC UN PLTY
CONCLUDED  RAINBOW TROUT FARMS                ID 10 CIV CWA   WAT                09/23/82 12/30/82 08/31/83 CONS DC W/PLTY    $15,000
                                                        CWA
FILED      WESTERN PROCESSING C               WA 10 CIV RCRA  HAZ                09/30/82 02/25/83
                                                        CWA
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                                                QUICK LOOK REPORT
**************************************************************************************************************
 02/17/84                                   ENFORCEMENT DOCKET SYSTEM                           PAGE:   3
                                CONFIDENTIAL REPORT FOR EPA INTERNAL USE ONLY
                            CURRENT STATUS OF ALL CAA CASES REFERRED TO DOJ: FY81 - FY83.
                            WHICH HAVE SINCE BEEN FILED IN COURT: SORTED BY REGION, STATE.
**************************************************************************************************************
STAT DESCR CASE NAME                         S  R  T   CASE  M   TYPE ORDER    TO DOJ:  FILED    CONCL    RESULT DESCR   ASSESSED
                                             T  E  Y         O
                                             A  G  P         D
                                             T  .  C         V
**************************************************************************************************************
                                                       CRCLA
                                                       CRCLA
                                                       CRCLA

  26 CASES   FOR FISCAL YEAR OF DATE TO DOJ    = 82
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                                                    QUICK LOOK REPORT
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  02/17/84                                          ENFORCEMENT DOCKET SYSTEM                                  PAGE:    4
                                         CONFIDENTIAL REPORT FOR EPA INTERNAL USE ONLY
                                      CURRENT STATUS OF ALL CWA CASES REFERRED TO DOJ: FY81 - FY83.
                                      WHICH HAVE SINCE BEEN FILED IN COURT: SORTED BY REGION, STATE.
***************************************************************************************************************************
STAT DESCR CASE NAME                      S  R  T   LASW  M   TYPE OWNER     TO DOJ   FILED    CONCL     RESULT DESCR    ASSESSED
                                          T  E  Y         E
                                          A  G  P         D
                                          T  N  C         V
***************************************************************************************************************************
FILED      METRO DISTR COMM OF BOSTON     MA 01 CIV CWA   WAT STATE          05/16/83 06/03/83
FILED      SOUTH ESSEX SEWERAGE DT. ETP   MA 01 CIV CWA   WAT MUNICIPAL      09/15/83 09/22/83
FILED      MAINE METAL FINISHING          ME 01 CIV CWA   WAT                11/08/82 03/02/83
CONCLUDED  WATTS REGULATOR CO.            NH 01 CIV CWA   WAT PRIVATE, IND   01/27/83 03/22/83 10/19/83 CONS DC W/PLTY     $78,000
FILED      AMERICAN METAL FABRICATORS     NH 01 CIV CWA   WAT PRIVATE, IND   04/29/83 09/30/83                             $61,500
CONCLUDED  J.T. BAKER CHEM CO.            NJ 02 CIV CWA   WAT                04/11/83 10/17/83 01/19/84 CONS DC UN PLTY    $20,000
FILED      SOUTHLAND CORP.                NJ 02 CIV CWA   WAT PRIVATE, IND   05/06/83 05/06/83
FILED      KOPPERS/WHEEL.-PITTS           WV 03 CIV CWA   WAT PRIVATE, IND   12/30/82 09/21/83

FILED      WELLSBURG, CITY OF             WV 03 CIV CWA   WAT MUNICIPAL      01/27/83 05/13/83
FILED      RANGER FUEL CORP.              WV 03 CIV CWA   WAT PRIVATE, IND   06/18/83 09/01/83
FILED      GAF CORP.                      KY 04 CIV CWA   WAT                05/03/83 09/26/83
                                                    CWA
CONCLUDED  [illegible] & SHIEL J., ET AL  KY 04 CIV CWA   WAT PRIVATE, IND   07/04/83 07/05/83 07/13/83 CONS DC W/PLTY          $0
CONCLUDED  GARY SANITARY DISTRICT         IN 05 CIV CWA   WAT DISTRICT       01/12/83 03/24/83 06/15/83 CONS DC UN PLTY
FILED      CITY OF LOWELL                 IN 05 CIV CWA   WAT MUNICIPAL      03/14/83 07/06/83
FILED      SAN DISRT OF HAMMOND-MUNSTER   IN 05 CIV CWA   WAT MUNICIPAL      03/14/83 07/06/83
FILED      ESCANABA & LAKE SUPERIOR RR C  MI 05 CIV CWA   WAT                07/20/83 12/06/83                             $20,000
FILED      CITY OF EUCLID                 OH 05 CIV CWA   WAT MUNICIPAL      12/08/82 04/28/83
CONCLUDED  WHEELING-PITT STEEL            OH 05 CIV CWA   WAT PRIVATE, IND   12/24/82 01/19/83 01/19/83 CONS DC W/PLTY
                                                              PRIVATE, IND
FILED      INTERNATIONAL PAPER CO         LA 06 CIV CWA   WAT PRIVATE, IND   06/08/83 09/27/83                             $68,000
FILED      CITY OF HOUMA                  LA 06 CIV CWA   WAT MUNICIPAL      06/20/83 08/31/83
                                                    CWA
FILED      ATLAS PROCESSING COMPANY, INC  LA 06 CIV CWA   WAT PRIVATE, IND   07/25/83 09/30/83                             $80,000
                                                    CWA
                                                    CWA
FILED      PUBLIC SERVICE CO OF NM        NM 06 CIV CWA   WAT PRIVATE, IND   05/20/83 10/26/83                             $50,000
FILED      PASADENA CHEM CORP             TX 06 CIV CWA   WAT                10/27/82 03/01/83                             $80,000
FILED      ST. JOE LEAD                   MO 07 CIV CWA   WAT                04/28/83 10/14/83
CONCLUDED  SOHLER, GAIL F.                SD 08 CIV CWA   WAT                11/17/82 04/22/83 05/27/83 CONS DC W/PLTY      $1,000
CONCLUDED  HOMESTAKE MINING               SD 08 CIA CWA   WAT PRIVATE, IND   12/17/82 01/14/83 01/24/83 CONS DC W/PLTY
FILED      WESTERN DAIRYMEN               UT 08 CIV CWA   WAT                11/23/82 10/31/83                             $13,000
FILED      PIMA COUNTY - INA ROAD         AZ 09 CIV CWA   WAT COUNTY         08/09/83 12/06/83
                                                    CWA
FILED      TITANIUM METAL CORP OF AM.     NV 09 CIV CWA   WAT PRIVATE, IND   11/03/82 08/26/83
FILED      NORTH PACIFIC PROCES           AK 10 CIV CWA   WAT                10/26/82 01/12/83
                                                    CWA
FILED      NORTHLAND GOLD DREDGING LTD    AK 10 CIV CWA   WAT PRIVATE, IND   06/09/83 07/11/83
FILED      TRIDENT SEAFOODS CORP.         AK 10 CIV CWA   WAT PRIVATE, IND   06/10/83 06/29/83
                                                    CWA       PRIVATE, IND
                                                              PRIVATE, IND
                                                              PRIVATE, IND
                                                              PRIVATE, IND
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                                                                  QUICK LOOK REPORT
..............................................................................................................................................
  02/17/84                                                      ENFORCEMENT DOCKET SYSTEM                                      PAGE:    5
                                                   CONFIDENTIAL REPORT FOR EPA INTERNAL USE ONLY
                                              CURRENT STATUS OF ALL CAA CASES REFERRED TO DOJ: FY81 - FY83.
                                              WHICH HAVE SINCE BEEN FILED IN COURT: SORTED BY REGION, STATE.
STAT.DESCR.CASE.NAME........................S..R..T...LOS#..D...TYPE.O.VIO....TO.DOJ...FILED....CONCL....RESULT.DESCR....ASSESSED.....
                                            T  E  Y          O
                                            A  G  P          O
                                            T  N  C          V
..............................................................................................................................................
                                                                    PRIVATE, IND
CONCLUDED  MOBIL OIL CORPORATION            AK 10 CIV CAA   HAZ PRIVATE, IND  06/24/83 08/03/83 08/03/83 CONS DC W/PLTY      $620,000

   33 CASES    FOR FISCAL YEAR OF DATE TO DOJ    = 83

   80 CASES    FOR PRINT TOTAL
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                                                   QUICK LOOK REPORT
..............................................................................................................................
  02/17/84                                        ENFORCEMENT DOCKET SYSTEM                                   PAGE    1
                                       CONFIDENTIAL REPORT FOR EPA INTERNAL USE ONLY
                                   CURRENT STATUS OF ALL CWA CASES REFERRED TO DOJ( FY81 - FY83,
                                   WHICH HAVE NOT SINCE BEEN FILED IN COURT) SORTED BY REGION, STATE.
..............................................................................................................................
STAT DESCR CASE NAME                            S  R  T   CASE  H   TYPE OWNER     TO DOJ    FILED    CONCL    RESULT DESCR    ASSESSED
                                                T  E  Y         O
                                                A  G  P         U
                                                T  N  C         W
..............................................................................................................................
AT DOJ      PENNTECH PAPERS                     PA 03 CIV CWA   WAT PRIVATE, IND  10/16/80
CONCLUDED   VEPCO-YORKTOWN PLT                  VA 03 CIV CWA   WAT PRIVATE, IND  02/20/81           07/25/83 EPA HQ W/DREW
CONCLUDED   UNION CARBIDE                       WV 03 CIV CWA   WAT PRIVATE, IND  12/20/80           01/05/82 EPA HQ W/DREW
CONCLUDED   HILLSBOROUGH UTIL                   FL 04 CIV CWA   WAT MUNICIPAL     11/24/80           05/13/83 EPA DECLINED
CONCLUDED   WOLVERINE MINING CO                 KY 04 CIV CWA   WAT               04/15/81           01/27/82 REGN W/DREW
CONCLUDED   TENNESSEE EASTMAN CO                TN 04 CIV CWA   WAT PRIVATE, IND  04/15/81           09/19/83 EPA HQ W/DREW
CONCLUDED   MONITOR SUGAR CO.                   MI 05 CIV CWA   WAT PRIVATE, IND  04/05/81           07/15/82 REGN W/DREW
AT US ATTY  HUKILL CHEMICAL CO                  OH 05 CIV CWA   WAT PRIVATE, IND  03/17/81
CONCLUDED   KENOSHA MATERIALS-PLEASANT PR       WI 05 CIV CWA   WAT               03/21/81           01/17/82 EPA HQ W/DREW
CONCLUDED   DURLEY REFINERY CO                  AR 06 CIV CWA   WAT               04/24/81           07/13/82 REGN W/DREW
CONCLUDED   ROSWELL, CITY OF                    NM 06 CIV CWA   WAT MUNICIPAL     04/01/81           06/29/82 EPA NOT PURSUED
CONCLUDED   [illegible] WATER CO INC            MO 07 CIV CWA   WAT               01/08/81           03/04/82 EPA NOT PURSUED

     12 CASES    FOR FISCAL YEAR OF DATE TO DOJ    = 81
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Bob Prolman:

Enclosed are guidance and resource materials requested at our meeting of 2/29 re: Hearing of March 7-8, 1984. Also enclosed are the referral materials requested in the Chairman's letter of invitation. Please call me (382-5417) or Betsy LaRoe (475-8494) of the Office of Water Enforcement and Permits if you have any questions.

RSRihm 3.6.84

Roger S. Rihm
Office of Legislative Analysis

OFFICE OF WATER ENFORCEMENT AND PERMITS

Resource Summary
FY 1984 - FY 1985

	FY 84	FY 85
PERMIT ISSUANCE		
Regions		
FTE	254.0	292.5
Total Dollars ($000)	8,680.4	10,703.0
Intra ($000)	8,429.3	10,451.9
Extra ($000)	251.1	251.1
Headquarters		
FTE	48.4	48.4
Total Dollars ($000)	6,454.3	6,087.8
Intra ($000)	2,019.1	2,177.6
Extra ($000)	4,435.2	3,910.2
WATER QUALITY ENFORCEMENT		
Regions		
FTE	325.7	340.7
Total Dollars ($000)	11,260.8	12,457.9
Intra ($000)	11,214.8	12,417.4
Extra ($000)	46.0	40.5
Headquarters		
FTE	27.1	30.1
Total Dollars	1,877.8	3,257.7
Intra ($000)	1,719.2	1,950.8
Extra ($000)	158.6	1,306.9

BUDGET SUMMARY

Office of Enforcement and Compliance Monitoring
Water Enforcement

	1984	1985
Total	87.4	97.9
Regions	42.4	47.5
NEIC	20.6	23.0
Headquarters	24.4	27.4

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OFFICE OF
EXTERNAL AFFAIRS

MEMORANDUM

The attached material dealing with the Environmental Protection Agency's compliance and enforcement procedures is supplied to you for your information. A press release will be issued on May 10th. You will be furnished with a copy of the release as soon as possible. If you would like a more complete briefing on the subject, please call Alice Jakulski of my staff at 382-5200. Alice will make whatever meeting arrangements may be necessary.

Greg Ward
Gregg Ward, Director
Office of Congressional Liaison

Attachments

BACKGROUND MATERIALS ON EPA'S MANAGEMENT APPROACH TO ENFORCEMENT

MAY, 1984

BRIEFING OUTLINE

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                                        QUICK LOOK REPORT
..06/11/84.........................ENFORCEMENT DOCKET SYSTEM..............................PAGE....2.........
                              CONFIDENTIAL REPORT FOR EPA INTERNAL USE ONLY
                          CURRENT STATUS OF ALL CWA CASES REFERRED TO DOJ FY81 - FY83.
                        WHICH HAVE NOT SINCE BEEN FILED IN COURT; SORTED BY REGION, STATE.
...........................................................................................................
STAT DESCR CASE NAME                 S  R  T   CASE  M   TYPE ORDER    TO DOJ   FILED     CONCL     RESULT DESCR    ASSESSED
                                     T  E  Y         O
                                     A  G  P         D
                                     T  N  C         V
AT.DOJ.....PHILADELPHIA.SW.PLT.......PA.03.CIV.CWA...NAT.MUNICIPAL.....06/16/82.................................
CONCLUDED  OLAN MELCHER LUMBER       AL 04 CIV CWA   NAT               11/20/81           07/01/83 EPA HQ W/DREW
AT DOJ     EAST CHICAGO SANIT.D      IN 05 CIV CWA   NAT MUNICIPAL     06/30/82
CONCLUDED  DOW CHEMICAL              LA 06 CIV CWA   NAT               10/26/81           12/21/82 EPA HQ W/DREW
AT DOJ     CHARITON R.LANDOWNERS     MO 07 CIV CWA   NAT               09/25/82
CONCLUDED  BUNKER HILL               ID 10 CIV CWA   NAT PRIVATE, IND  05/24/82           03/23/83 EPA HQ W/DREW

   6 CASES   FOR FISCAL YEAR OF DATE TO DOJ    = 82
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                                             QUICK LOOK REPORT
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  02/17/84                                ENFORCEMENT DOCKET SYSTEM                                 PAGE    3
                                  CONFIDENTIAL REPORT FOR EPA INTERNAL USE ONLY
                              CURRENT STATUS OF ALL CWA CASES REFERRED TO DOJ FY83 = FY83.
                              WHICH HAVE NOT SINCE BEEN FILED IN COURT, SORTED BY REGION, STATE.
*****************************************************************************************************************
STAT DESCR CASE NAME                   S  R  T   LAW  M  TYPE OWNER     TO DOJ   FILED    CONCL    RESULT DESCR     ASSESSED
                                       T  E  Y        O
                                       A  G  P        D
                                       T  N  C        V
*****************************************************************************************************************
AT DOJ     LYNN (POTW) - CIA           MA 01 CIA CWA  WAT MUNICIPAL      08/12/83
CONCLUDED  R.G. THOMPSON TOOL CO.      NH 01 CIV CWA  WAT PRIVATE, IND   04/27/83            Y      DECLINED BY DOJ
AT US ATTY AMERICAN CYANAMID CO        NJ 02 CIV CWA  WAT                10/18/82
                                                 CWA
AT DOJ     VIRGIN ISLANDS WTP          VI 02 CIV CWA  WAT STATE          12/09/82
                                                 CWA      STATE
                                                          STATE
                                                          STATE
                                                          STATE
                                                          STATE
                                                          STATE
                                                          STATE
AT US ATTY TULL, EDWARD [illegible] (TULL III)  VA 03 CIV CWA  WAT                01/27/83
AT DOJ     [illegible]                 VA 03 CIV CWA  WAT PRIVATE, IND   07/20/83
                                                 CWA
                                                 CWA
AT DOJ     VEPCO (CASTLEWOOD ROAD)     VA 03 CIV TSCA RES PRIVATE, IND   07/25/83
                                                 CERCLA
                                                 RCRA
                                                 CWA
AT DOJ     PLASTICS UNIVERSAL CORPORATIO KY 04 CIV CWA  WAT PRIVATE, IND   08/24/83
                                                 CWA
AT DOJ     JONES&LAUGHLIN=CAMPBELL     OH 05 CIC CWA  WAT                01/13/83
AT DOJ     [illegible] PRODUCTS, INC.  OH 05 CIV CWA  WAT PRIVATE, IND   09/19/83
AT DOJ     CINCINNATI (POTW)           OH 05 CIV CWA  WAT MUNICIPAL      09/20/83
AT DOJ     CITY OF KENNER              LA 06 CIV CWA  WAT MUNICIPAL      06/29/83
AT DOJ     HILO COAST PROCESSING CO.   HI 09 CIV CWA  WAT PRIVATE, IND   09/29/83
AT US ATTY TWIN FALLS (POTW)=CIC       ID 10 CIC CWA  WAT MUNICIPAL      09/29/83

   14 CASES   FOR FISCAL YEAR OF DATE TO DOJ    = 83

   [illegible] CASES   FOR PRINT TOTAL
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§106 Money going to States from EPA

	Program Activities			
Fiscal Year	Issuance	Enforcement	Monitoring	Total
	(millions)			
1981	$ 8.6	$ 5.9	$16.3	$30.8
1982	10.1	8.7	11.4	30.2
1983	10.1	8.7	12.2	31.0
1984	11.1	10.7	11.4	33.2
1985	20.7	19.3	3.0	43.0

Source: EPA

I. OBJECTIVES OF BRIEFING

- INFORM INTERESTED GROUPS OF EPA'S MANAGEMENT APPROACH TO ACHIEVING COMPLIANCE AND A FAIR AND EFFECTIVE ENFORCEMENT PROGRAM
- EXPLAIN HOW EPA IS TRANSLATING THIS ENFORCEMENT WILL AND MANAGEMENT APPROACH INTO DELIBERATE ACTION:
  - COMPLIANCE AND ENFORCEMENT STRATEGIES
  - ACCOUNTABILITY AND PERFORMANCE TO DATE
  - NEW ORGANIZATION
  - EXPANDED RESOURCES
  - CORRECTIVE ACTION BY MANAGEMENT
- SOLICIT CONCERNS AND SUGGESTIONS FOR AGENCY MANAGEMENT APPROACH AND PRIORITIES

A. COMPLIANCE AND ENFORCEMENT GOALS AND OBJECTIVES

- HIGH RATES OF REAL AND CONTINUING COMPLIANCE
- CREDIBLE AND RELIABLE COMPLIANCE MONITORING, TO DETECT VIOLATIONS AND PROVIDE A STRONG TECHNICAL BASIS FOR FOLLOW-UP ENFORCEMENT
- AN ACCURATE NATIONAL STATISTICAL PICTURE OF COMPLIANCE STATUS
- AN EFFECTIVE STATE AND FEDERAL PARTNERSHIP ON ENFORCEMENT AND COMPLIANCE
- USE OF THE FULL RANGE OF STATE AND FEDERAL ACTIONS TO ACHIEVE COMPLIANCE RESULTS TAILORED TO THE NATURE OF THE COMPLIANCE PROBLEMS -- FROM COMPLIANCE PROMOTION AND TECHNICAL ASSISTANCE THROUGH CIVIL AND CRIMINAL SANCTIONS
- CONTINUED AND TIMELY USE OF AND FOLLOW-UP TO EACH OF OUR ENFORCEMENT TOOLS
- MANAGEMENT SYSTEMS WHICH TARGET PRIORITIES AND PROBLEMS, KEEP OUR FOCUS ON OUR OVERRIDING COMPLIANCE AND ENVIRONMENTAL GOALS AND PROMOTE EFFECTIVE CORRECTIVE ACTION
- FAIR, CONSISTENT, AND OPEN ADMINISTRATION OF OUR COMPLIANCE AND ENFORCEMENT PROGRAMS
- ACCOUNTING TO PUBLIC FOR THE STATUS AND ACCOMPLISHMENTS OF COMPLIANCE AND ENFORCEMENT PROGRAMS

B. HOW THE STRATEGIES WERE DEVELOPED

TASK FORCE CHARGE

- IN JUNE 1983, THE DEPUTY ADMINISTRATOR CHARGED EPA's OFFICE OF ENFORCEMENT AND COMPLIANCE (OECM) WITH LEADING A TASK FORCE RESPONSIBLE FOR GUIDING DEVELOPMENT OF OPERATIONAL COMPLIANCE AND ENFORCEMENT STRATEGIES BY THE RESPONSIBLE PROGRAM OFFICES FOR EACH OF THE MAJOR PROGRAMS WHICH THE AGENCY ADMINISTERS.

COMPOSITION

- IN ADDITION TO OECM, THE TASK FORCE INCLUDED LEGAL AND TECHNICAL REPRESENTATIVES FROM THE HEADQUARTER PROGRAM OFFICES AND SELECTED REGIONAL OFFICE.

PROCESS

- THE TASK FORCE FORMED SUBCOMMITTEES RESPONSIBLE FOR DEVELOPING PROGRAM-SPECIFIC STRATEGIES.
- EACH SUBCOMMITTEE WAS LED BY A HEADQUARTERS PROGRAM OFFICE OFFICIAL, WITH LEGAL AND TECHNICAL REPRESENTATIVES FROM HEADQUARTERS AND THE REGIONS, AND CONSULTED WITH REPRESENTATIVES OF STATE AGENCIES.
- EACH PROGRAM ASSISTANT ADMINISTRATOR PERSONALLY APPROVED HIS OR HER RESPECTIVE STRATEGY.

PRODUCTS

- IN JANUARY 1984, THE DEPUTY ADMINISTRATOR APPROVED TASK FORCE'S WORK AND ISSUED THE FOLLOWING PRODUCTS:
    - A SET OF 9 PROGRAM-SPECIFIC COMPLIANCE/ENFORCEMENT STRATEGIES
    - A SET OF WORKING PRINCIPLES UNDERLYING NATIONAL COMPLIANCE AND ENFORCEMENT PROGRAMS
    - A SUMMARY DOCUMENT SETTING OUT THE STRATEGIC FRAMEWORK FOR EPA'S COMPLIANCE AND ENFORCEMENT PROGRAM

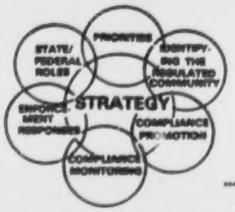
FOLLOW-UP

- COMPLIANCE AND ENFORCEMENT STRATEGIES WERE USED IN DEVELOPING FY 1985 OPERATING YEAR GUIDANCE AND WILL BE USED IN THE FY 1986 BUDGET
- COMPLIANCE AND ENFORCEMENT STRATEGIES WERE USED TO GET PROGRAM COMMITMENTS TO FILL "GAPS" THAT BECAME EVIDENT DURING THE PROCESS, E.G.:
    - DEVELOPMENT OF A UIC--UNDERGROUND INJECTION CONTROL PROGRAM ENFORCEMENT STRATEGY
    - IMPLEMENTING CONTINUOUS COMPLIANCE IN THE AIR PROGRAM
- THE STRATEGIES, AS PART OF THE STRATEGIC MANAGEMENT SYSTEM IMPROVED AGENCY'S ABILITY TO TARGET PRIORITIES AND PROBLEMS, AND TO KEEP OUR FOCUS ON OVERRIDING COMPLIANCE AND ENVIRONMENTAL GOALS.
- EVALUATION UNDERWAY OF FY 1984 STRATEGIES TO REFINE, IMPROVE AND INSTITUTIONALIZE THE PROCESS FOR FY 1985.

WHAT IS A COMPLIANCE/ENFORCEMENT STRATEGY?

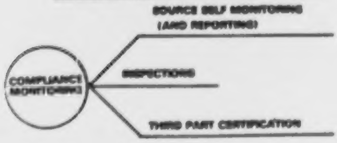
...AGENCY PLANS FOR THE DESIGN AND IMPLEMENTATION OF PROGRAMS TO CHANGE THE BEHAVIOR OF THE REGULATED COMMUNITY TO ASSURE HIGH RATES OF COMPLIANCE WITH ITS REGULATIONS AND STANDARDS.

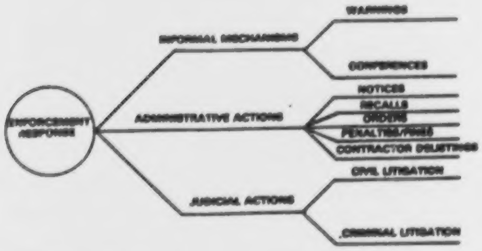
COMPLIANCE/ENFORCEMENT STRATEGIES INCLUDE SIX MAJOR COMPONENTS..


PRIORITIES
STATE/ FEDERAL ROLES
IDENTIFYING THE REGULATED COMMUNITY
STRATEGY
ENFORCEMENT RESPONSES
COMPLIANCE PROMOTION
COMPLIANCE MONITORING

...ALL OF THEM INTERRELATED

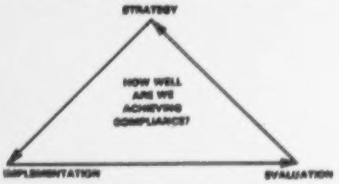
COMPLIANCE/ENFORCEMENT STRATEGIES REFLECT CHOICES...


SOURCE SELF MONITORING (AND REPORTING)
COMPLIANCE MONITORING
INSPECTIONS
THIRD PART CERTIFICATION


WARNINGS
INFORMAL MECHANISMS
CONFERENCES
NOTICES
RECALLS
ORDERS
ENFORCEMENT RESPONSE
ADMINISTRATIVE ACTIONS
PENALTIES/FINES
CONTRACTOR DEBARMENT
CIVIL LITIGATION
JUDICIAL ACTIONS
CRIMINAL LITIGATION

*EXAMPLES ONLY

COMPLIANCE/ENFORCEMENT STRATEGIES ARE LIVING "DOCUMENTS"


STRATEGY
HOW WELL ARE WE ACHIEVING COMPLIANCE?
IMPLEMENTATION
EVALUATION

...AND ANSWER QUESTIONS

WHAT DATA/TESTS/PROTOCOLS SHOULD BE USED TO DETERMINE COMPLIANCE?

WHICH SOURCES OF DATA: INSPECTIONS? SOURCE REPORTING?

WHAT ANALYSES/TARGETING BASED UPON THE DATA?

HOW TO PROCESS AND MANAGE THE INFORMATION?

HOW TO ASSURE DATA QUALITY AND INTEGRITY?

WHAT ARE OUR EXPECTATIONS FOR TIMELY AND APPROPRIATE ENFORCEMENT RESPONSES. FACTORS TO CONSIDER FOR EACH TYPE OF VIOLATION, FOR INITIAL RESPONSES, FOR THE CRITERIA OF ESCALATING RESPONSES?

WHEN TO SETTLE VERSUS LITIGATE?

WHETHER TO IMPOSE AND AMOUNT OF PENALTY?

HIGHLIGHTS FROM THE FY'84 COMPLIANCE/ENFORCEMENT STRATEGIES

PRIORITIES	o TAKE ENFORCEMENT ACTION TO REDUCE NUMBER OF RCRA CLASS I VIOLATIONS BY MAJOR HAZARDOUS WASTE HANDLERS o NEGOTIATE RESPONSIBLE PARTY CLEAN-UP OR PURSUE COST RECOVERY ACTIONS AT SUPERFUND SITES o STRENGTHEN ASBESTOS-IN-SCHOOL COMPLIANCE PROGRAM o IMPROVE COMPLIANCE WITH NPDES PERMITS BY MUNICIPALITIES o ACHIEVE COMPLIANCE WITH PRETREATMENT REQUIREMENTS o EMPHASIZE FEDERAL FACILITY COMPLIANCE o EMPHASIZE COMPLIANCE WITH VOLATILE ORGANIC COMPOUNDS (VOC) REQUIREMENTS o ACHIEVE COMPLIANCE WITH PCB RULES o ENSURE IN-USE VEHICLE COMPLIANCE
COMPLIANCE PROMOTION	o AIR MOBILE SOURCE PROGRAM'S PUBLIC EDUCATION CAMPAIGN TO DISCOURAGE TAMPERING WITH AUTOMOBILE POLLUTION CONTROL DEVICES o TOXIC SUBSTANCE PROGRAM'S DIRECT ASSISTANCE TO SMALL BUSINESSES FOR PREMANUFACTURE NOTIFICATION REQUIREMENTS o PESTICIDE PROGRAM'S TRAINING AND CERTIFICATION PROGRAM FOR APPLICATORS OF HAZARDOUS PESTICIDES
COMPLIANCE MONITORING	o IMPROVEMENTS IN PCB INSPECTION EFFICIENCY THROUGH PRELIMINARY SCREENING OF POTENTIAL USERS o TARGETING MOBILE SOURCE COMPLIANCE RESOURCES ON MANUFACTURERS TO PREVENT NON-COMPLIANCE o INCREASED USE OF CONTINUOUS EMISSIONS MONITORING AND IMPROVED INSPECTOR TRAINING (CEM) IN THE AIR PROGRAM o UPGRADE THE AUTOMATED SYSTEM FOR NPDES PERMIT AND COMPLIANCE DATA AND REFINE THE COMPLIANCE DEFINITION FOR NATIONAL REPORTING
ENFORCEMENT RESPONSE	o EXPANDED USE OF ADMINISTRATIVE ORDERS WITH PENALTIES IN RCRA TO FACILITATE CLEAN-UP OF HAZARDOUS WASTE FACILITIES AND FOR SUPERFUND SITES TO ESTABLISH GROUNDS FOR TREBLE DAMAGES WITH COST RECOVERY ACTIONS o FEDERAL FACILITIES COMPLIANCE DISPUTES TO BE ESCALATED THROUGH EXECUTIVE ORDER MECHANISM
EVALUATION	o EVALUATION OF CLEAN WATER ACT'S ENFORCEMENT MANAGEMENT SYSTEM (EMS) TO FOSTER CONSISTENT NATIONAL APPROACH o EXPANSION OF PESTICIDE PROGRAM DATA AUDIT/LAB INSPECTION PROGRAM
STATE/FEDERAL	o STATIONARY AIR SOURCES PROGRAM INITIATIVE TO ALLOW GREATER FLEXIBILITY FOR STATE INSPECTION PROGRAMS o PESTICIDE PROGRAM EMPHASIS ON ENFORCEMENT PROGRAM DELEGATION TO REMAINING STATES AND EFFECTIVE OVERSIGHT OF DELEGATED STATES

III. MANAGEMENT APPROACH: HOW WILL THE AGENCY ACHIEVE ITS GOALS?

- MANAGEMENT ACCOUNTABILITY SYSTEM: MEASURES OF SUCCESS BEING TRACKED
- SUMMARY OF ACCOUNTABILITY COMMITMENTS AND PERFORMANCE:
  - SIGNIFICANT NONCOMPLIERS
  - INSPECTIONS
  - ENFORCEMENT RESPONSE
- HOW OUR MANAGEMENT SYSTEM IS WORKING
- SYSTEMS TO MOVE VIOLATIONS TO RESOLUTION

A. MANAGEMENT ACCOUNTABILITY SYSTEM

. . . MANAGING AND TRACKING A MIXTURE OF RESULTS AND ACTIVITY LEVELS

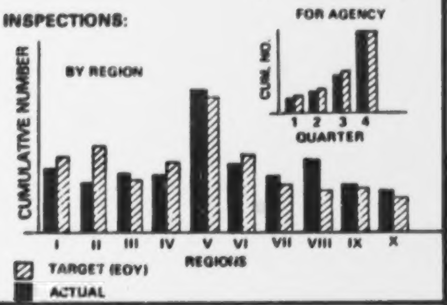
FOUR AREAS:

- COMPLIANCE MONITORING
- COMPLIANCE RATES
- SIGNIFICANT VIOLATIONS
- ENFORCEMENT RESPONSE

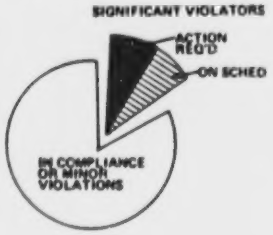
SAMPLE ONLY- -DATA ARE NOT REAL

FOCUS:

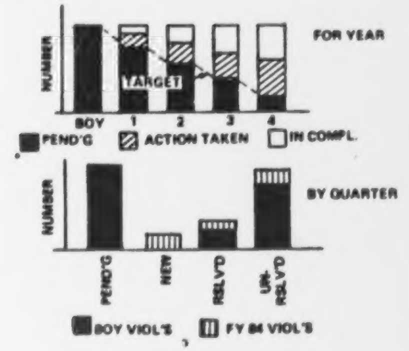
INSPECTIONS:



COMPLIANCE:



SIGNIFICANT VIOLATORS:



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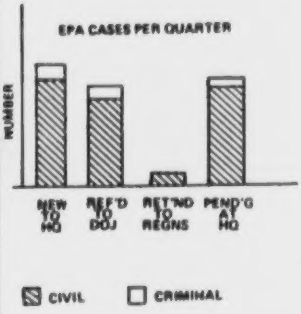
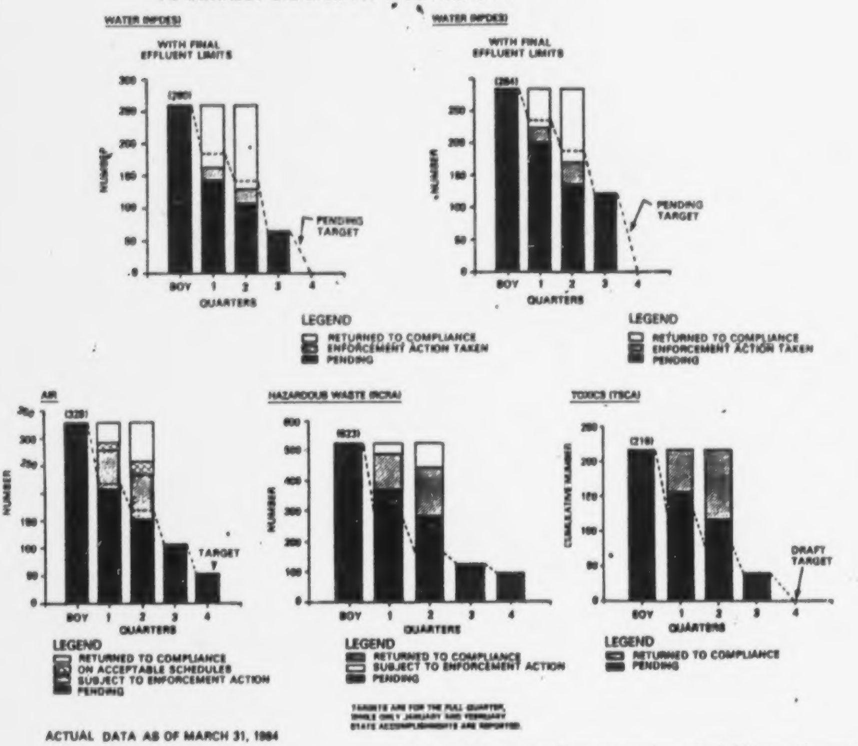


B. ACCOUNTABILITY COMMITMENTS AND PERFORMANCE

WE ARE MAKING STRIDES IN MANAGING FOR RESULTS

WE ARE ESTABLISHING AND MEETING COMMITMENTS TO CORRECT SIGNIFICANT VIOLATIONS IN:



TARGETS ARE FOR THE FULL QUARTER, WHILE ONLY JANUARY AND FEBRUARY STATE ACCOMPLISHMENTS ARE REPORTED.

ACTUAL DATA AS OF MARCH 31, 1984

. . . FOR A TARGETED LIST OF NAMED FACILITIES AND VIOLATIONS

1/ WATER THE CURRENT WORKING DEFINITION IS:

1) TECHNICAL REVIEW CRITERIA ARE VIOLATED ANY TWO MONTHS IN A SIX MONTH PERIOD; OR

2) PERMIT LIMITATIONS FOR THE SAME PARAMETER ARE EXCEEDED BY ANY AMOUNT ANY FOUR MONTHS IN A SIX MONTH PERIOD; OR

3) COMPLIANCE SCHEDULE DATES ARE MISSED BY 90 DAYS OR MORE

3/ RCRA MAJOR HANDLERS WITH CLASS I VIOLATIONS ARE THE RCRA EQUIVALENT OF SIGNIFICANT NON-COMPLIERS. CLASS I VIOLATIONS ARE THOSE WHICH POSE DIRECT AND IMMEDIATE HARM OR THREATS OF HARM TO PUBLIC HEALTH OR THE ENVIRONMENT.

2/ AIR

1) A VIOLATION OF A NESHAPS STANDARD UNLESS THE MAGNITUDE AND DURATION OF THE VIOLATION ARE MINIMAL AND THE VIOLATION NONRECURRING; OR

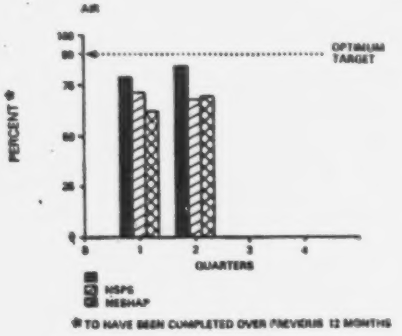
2) A VIOLATION OF NEW SOURCE PERMITTING REQUIREMENTS AND NSPS REQUIREMENTS, UNLESS THE MAGNITUDE AND DURATION OF THE VIOLATION ARE MINIMAL; OR

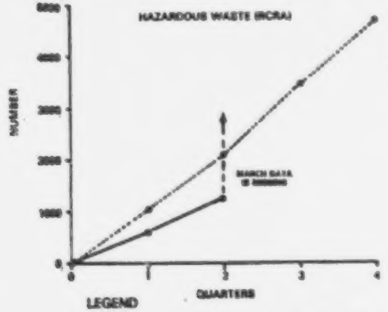
3) A VIOLATION OF A STATE IMPLEMENTATION PLAN (SIP) IF THE SOURCE IS OF SUFFICIENT SIZE (PRESUMPTIVELY) 250 TONS/YEAR POTENTIAL EMISSIONS OR 100 TONS/YEAR ACTUAL EMISSIONS OF ANY POLLUTANTS AND IS SO LOCATED AS TO IMPACT A NONATTAINMENT AREA FOR A POLLUTANT FOR WHICH THE SOURCE IS IN VIOLATION.

4/ TOXICS

1) CIVIL ADMINISTRATIVE ACTIONS
2) CIVIL REFERRALS TO DOJ
3) CRIMINAL REFERRALS TO DOJ
4) NOTICES OF NONCOMPLIANCE ON ASBESTOS-IN-SCHOOLS

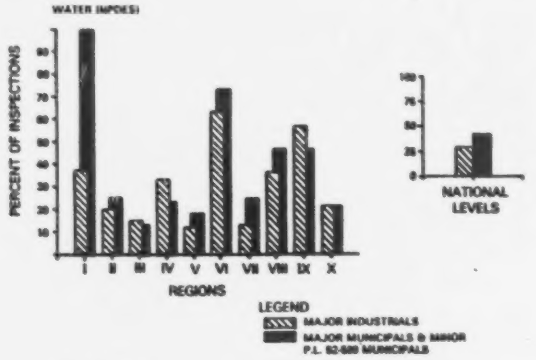
WHILE CONTINUING TO IMPROVE OUR MEASURES OF RESULTS, WE ARE ALSO TRACKING ENFORCEMENT ACTIVITY . . . SUCH AS INSPECTIONS FOR:

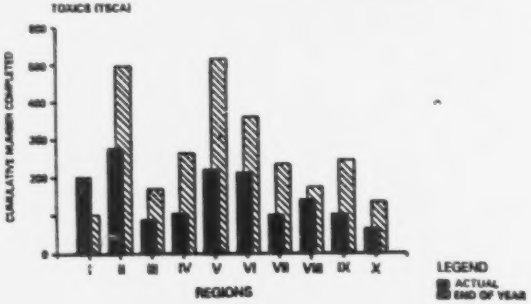




TARGET ARE FOR THE FULL SECOND QUARTER WHILE ONLY JANUARY AND FEBRUARY STATE ACCOMPLISHMENTS ARE REPORTED.

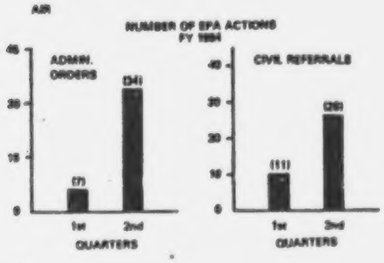
ACTUAL DATA AS OF MARCH 31, 1984

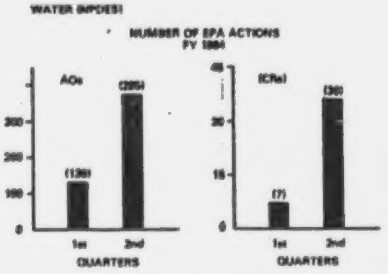


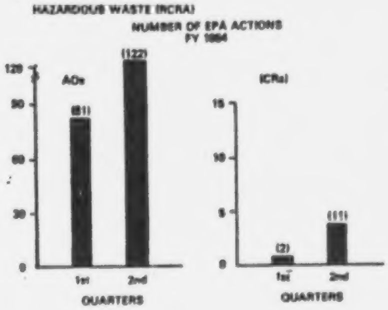


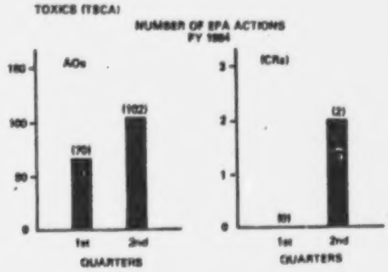
. . . TO ENSURE WE ARE IDENTIFYING VIOLATIONS AND REPORTING ACCURATE COMPLIANCE STATISTICS

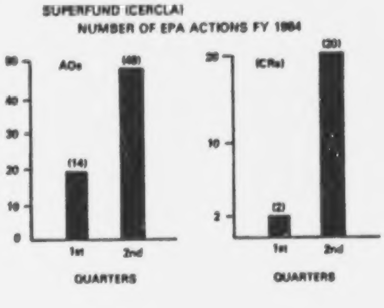
. . . AND LEVELS OF ENFORCEMENT ACTIONS SUCH AS ADMINISTRATIVE ORDERS AND CIVIL REFERRALS FOR:









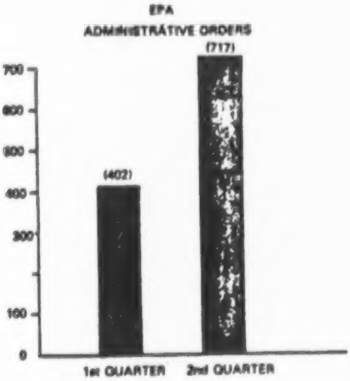


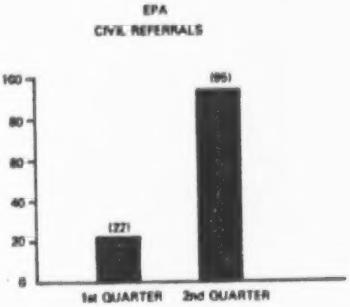
. . . TO ENSURE A STRONG ENFORCEMENT PRESENCE

C. HOW OUR MANAGEMENT SYSTEM IS WORKING:

- COMMITMENTS CALLED FOR TO STEP UP ENFORCEMENT ACTIVITY FOR SECOND AND THIRD QUARTERS BASED ON POOR FIRST QUARTER PERFORMANCE

- ADDITIONAL REPORTING INITIATED ON PERFORMANCE AGAINST TARGETS (MONTHLY REPORTING DURING SECOND QUARTER) AS A SHORT TERM MANAGEMENT RESPONSE





- WE ARE WORKING WITH STATES TO DEFINE SIMILAR PERFORMANCE MEASURES FOR FY 1985 TO PRESENT A TOTAL NATIONAL PICTURE. STATE DATA THAT ARE NOW REPORTED INDICATE GENERALLY IMPROVED PERFORMANCE -- BUT INCONSISTENT DEFINITIONS DO NOT CURRENTLY SUPPORT FIRM NUMBERS OR COMPARISONS.

NATIONAL SUMMARY OF ENFORCEMENT ACTIVITY

SECOND QUARTER RESULTS

		INSPECTIONS		ADMINISTRATIVE ORDERS		REFERRALS	
		EPA	STATE	EPA	STATE	EPA	STATE
AIR	CUMULATIVE	266	1592	34	42	26(8)	12
	TARGET	NA	NA	30	120	25	30
WATER	Cumulative	514	1077	297	266	36*** (1)	45
	Target	NA	NA	209	444	28	60
FIFRA	Cumulative	217	10957	109	517	0	41
	Target	NA	NA	69	244	0	5
TSCA	Cumulative	1116	NA	102	NA	2*	NA
	Target	NA	NA	83	NA	2	NA
RCRA	Cumulative	278	780	122	259	11(1)	72
	Target	NA	NA	89	256	9	20
SUPERFUND	Cumulative	NA	NA	48	NA	20(8)	NA
	Target	NA	NA	40**	NA	15	NA
TOTALS	Cumulative	2391	14406	712	1084	95(18)	170
	Target	NA	NA	520	1064	79	115

NOTE: Definitional questions and consistency problems in State reported data prevent firm conclusions or comparisons from being drawn.

NOTE: Number in parenthesis is amendments, re-referrals or referrals counted on facility basis which do not count in DOCKET as new second quarter case referrals but were included in projections and are counted in the 95 total actions for second quarter.

*Criminal referrals
**Superfund projections revised.
***Includes five referrals under SDWA.

CAPO 5/9/84)

D. SYSTEMS TO MOVE VIOLATIONS TO RESOLUTION

- MILESTONES AND TRACKING FOR TIMELY AND APPROPRIATE ENFORCEMENT ACTION:

  A KEY NEW ELEMENT TO OUR MANAGEMENT APPROACH SHOULD ENSURE SUFFICIENT ENFORCEMENT ACTION IS UNDERTAKEN. WE ARE BETTER DEFINING, IN COOPERATION WITH STATES, WHAT CONSTITUTES TIMELY AND APPROPRIATE ACTION AGAINST NON-COMPLIERS. SEVERAL KEY MILESTONES WILL SERVE AS TRIGGER POINTS TO ASSESS PROGRESS IN ACHIEVING COMPLIANCE.

  MILESTONES AND TIMEFRAMES (E.G., A TARGET NUMBER OF DAYS FROM "DETECTION" OF A VIOLATION WITHIN WHICH AN INITIAL RESPONSE SHOULD BE MADE) WILL VARY FROM PROGRAM-TO-PROGRAM AND MUST BE ADJUSTED AND TAILORED TO STATE PROCEDURES.

- OUR CONSENT DECREE TRACKING SYSTEM NOW IDENTIFIES KEY COMMITMENTS FOR TIMELY FOLLOW-UP AND ENFORCEMENT -- IF NEEDED

IV ORGANIZATION: WHO IS RESPONSIBLE FOR COMPLIANCE AND ENFORCEMENT?

- OVERVIEW OF STRATEGIC PLANNING AND MANAGEMENT SYSTEM
- EFFECTIVE OVERSIGHT AND DECENTRALIZED IMPLEMENTATION
- STRENGTHENING THE FEDERAL/STATE PARTNERSHIP

A. EPA'S STRATEGIC PLANNING AND MANAGEMENT SYSTEM

- INTEGRATES SEVERAL EXISTING PLANNING AND MANAGEMENT SYSTEMS
- DESIGNED TO FOSTER PARTICIPATION BY STATES AT ALL STAGES

I. ESTABLISHING GOALS AND PRIORITIES

- PRIORITY LIST
- AGENCY OPERATING GUIDANCE: A TWO YEAR PLANNING CYCLE WHICH ADDRESSES
  - -- PROGRAM GOALS
  - -- PROGRAM STRATEGIES

II. PROGRAM GUIDANCE TO REGIONS

- USE IN GRANT NEGOTIATIONS WITH THE STATES
- ESTABLISH PROGRAM ACCOUNTABILITY MEASURES
- ESTABLISH PERFORMANCE STANDARDS

III. PROGRAM OVERSIGHT

- ESTABLISH STATE COMMITMENTS AND OVERSIGHT PROTOCOLS
- MONITOR PERFORMANCE AGAINST TARGETS QUARTERLY

IV. INTERNAL AUDITING AND SYSTEM MAINTENANCE

- BI-WEEKLY TRACKING OF HEADQUARTERS PROGRAM COMMITMENTS
- QUARTERLY PERFORMANCE REVIEW OF REGIONS AND MEETINGS WITH AA's
- SEMI-ANNUAL PERFORMANCE REVIEW MEETINGS IN REGIONS
- PERFORMANCE EVALUATIONS OF SENIOR MANAGERS

B. EFFECTIVE OVERSIGHT AND DECENTRALIZED IMPLEMENTATION

- ENFORCEMENT IMPLEMENTATION IS DECENTRALIZED, WITH RESPONSIBILITIES PRIMARILY CONSOLIDATED IN THE REGIONS AND STATES.

- DECENTRALIZATION IS BASED ON THE BELIEF THAT PROGRAM DECISIONS AND IMPLEMENTATION ACTIONS ARE BEST CARRIED OUT BY THE GOVERNMENT LEVEL WITH THE GREATEST UNDERSTANDING OF THE ENVIRONMENTAL CONDITIONS AND PEOPLE AFFECTED BY THEM.

- THE INTENT OF OUR ORGANIZATIONAL STRUCTURE IS TO INTEGRATE COMPLIANCE EFFORTS MORE CLOSELY WITH ACHIEVEMENT OF BASIC PROGRAM GOALS AND PRIORITIES.

- EACH PROGRAM ASSISTANT ADMINISTRATOR AND REGIONAL ADMINISTRATOR IS HELD ACCOUNTABLE FOR COMPLIANCE AND ENFORCEMENT EFFORTS UNDER HIS OR HER JURISDICTION.

- EPA REGIONAL ADMINISTRATORS HAVE CLEAR RESPONSIBILITY FOR:

  - ESTABLISHING EFFECTIVE STATE/FEDERAL PARTNERSHIPS;
  - TAKING APPROPRIATE AND TIMELY ACTION TO ACHIEVE EXPEDITIOUS AND CONTINUING COMPLIANCE;
  - SUBMITTING DIRECT REFERRALS TO DOJ FOR ROUTINE CASES;
  - OVERSEEING DAY TO DAY MANAGEMENT OF ENFORCEMENT THROUGH A SINGLE ENFORCEMENT CONTACT -- DEPUTY REGIONAL ADMINISTRATORS IN MOST REGIONS; AND
  - OVERSEEING ENFORCEMENT PROGRAMS IN DELEGATED APPROVED STATES.

- HEADQUARTERS MEDIA PROGRAM ASSISTANT ADMINISTRATORS ARE RESPONSIBLE FOR:

  - SETTING NATIONAL POLICY;
  - DEVELOPING COMPLIANCE AND ENFORCEMENT STRATEGIES, OPERATING GUIDANCE, AND REPORTING REQUIREMENTS;
  - PROVIDING REGIONS AND STATES WITH TECHNICAL AND MANAGEMENT SUPPORT; AND
  - OVERSEEING REGIONAL ENFORCEMENT PROGRAMS.

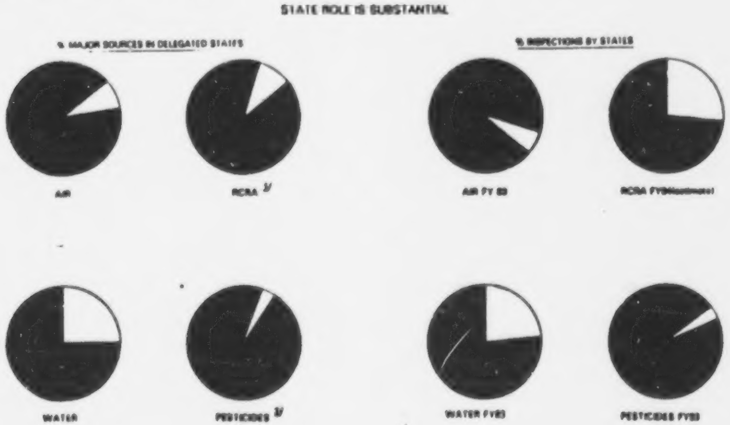
- THE OFFICE OF ENFORCEMENT AND COMPLIANCE IS CHARGED WITH:

  - SERVING AS SPOKESPERSON FOR NATIONAL COMPLIANCE AND ENFORCEMENT EFFORTS IN ALL MEDIA;
  - PROVIDING LEADERSHIP TO FOSTER INNOVATION AND IMPROVED APPLICATION OF TRADITIONAL METHODS IN COMPLIANCE PROGRAMS;
  - ESTABLISHING AND IMPLEMENTING COMPLIANCE AND ENFORCEMENT PORTIONS OF PROGRAM PLANNING AND MANAGEMENT SYSTEMS;
  - DEVELOPING AGENCY-WIDE POLICIES AND PROCEDURES FOR ENFORCEMENT;
  - PRIMARY LIAISON WITH DOJ ON ENFORCEMENT MATTERS;
  - NATIONAL PROGRAM MANAGER FOR THE CRIMINAL ENFORCEMENT PROGRAM;
  - TECHNICAL AND LEGAL ENFORCEMENT CASE SUPPORT THROUGH THE NATIONAL ENFORCEMENT INVESTIGATIONS CENTER AND HEADQUARTERS ENFORCEMENT ATTORNEYS; AND
  - ASSURING THE QUALITY AND CONSISTENCY OF COMPLIANCE AND ENFORCEMENT ACTIVITIES ACROSS ALL MEDIA.

C. STRENGTHENING THE STATE/FEDERAL PARTNERSHIP

- o EPA'S OVERSIGHT RESPONSIBILITY IN DELEGATED STATES IS TO ENSURE THE EVEN-HANDED APPLICATION AND ENFORCEMENT OF FEDERAL ENVIRONMENTAL LAWS, REGULATIONS AND STANDARDS

- o DELEGATED STATES HAVE THE LEAD RESPONSIBILITY FOR COMPLIANCE AND ENFORCEMENT ACTIVITIES WITH EPA AS A STRONG BACK-UP FOR ACTION WHEN NEEDED



1 INCLUDES ALL PHASES OF INTERIM AUTHORIZATION
2 REPRESENTS % PROGRAMS DELEGATED

- o EPA AND STATES ARE TO CONDUCT ANNUAL JOINT PLANNING FOR COMPLIANCE AND ENFORCEMENT, AND DEVELOP STATE ENFORCEMENT "AGREEMENTS"

- o THESE "AGREEMENTS" WILL TAKE DIFFERENT FORMS BUT WILL ENSURE THERE ARE

  - CLEAR OVERSIGHT CRITERIA, SPECIFIED IN ADVANCE, UPON WHICH EPA WILL ASSESS BOTH STATE AND REGIONAL OFFICE PERFORMANCE

  - CLEAR CRITERIA FOR DIRECT FEDERAL ENFORCEMENT ACTIONS IN DELEGATED STATES, WITH PROVISION FOR ADVANCE NOTIFICATION AND CONSULTATION; AND

  - REPORTING OF STATE DATA TO ENSURE EFFECTIVE OVERSIGHT

- o WE WILL HAVE THE COMPLETE PICTURE ON STATE AND FEDERAL PERFORMANCE IN FY 85, THROUGH MEASURES AGREED UPON THIS YEAR

V. RESOURCES: HOW MUCH OF THE AGENCY'S RESOURCES ARE DEVOTED TO COMPLIANCE AND ENFORCEMENT?

- HIGHLIGHTS OF FY 1985 BUDGET REQUEST
- HISTORIC TRENDS IN ENFORCEMENT RESOURCES
- FY 1985-86 ENFORCEMENT RESOURCES BY PROGRAM

A. HIGHLIGHTS OF FY 1985 BUDGET REQUEST FOR ENFORCEMENT ACTIVITIES

COMPLIANCE AND ENFORCEMENT RESOURCES ARE BEING SUBSTANTIALLY INCREASED

- IN FY 1985, EPA IS REQUESTING A 17 PERCENT INCREASE IN THE NUMBER OF EMPLOYEES DEVOTED TO COMPLIANCE AND ENFORCEMENT. THIS IS ON TOP OF A 20 PERCENT INCREASE FROM FY 1983 TO 1984.

DRAMATIC INCREASES ARE REQUESTED FOR THE RCRA AND SUPERFUND ENFORCEMENT PROGRAMS

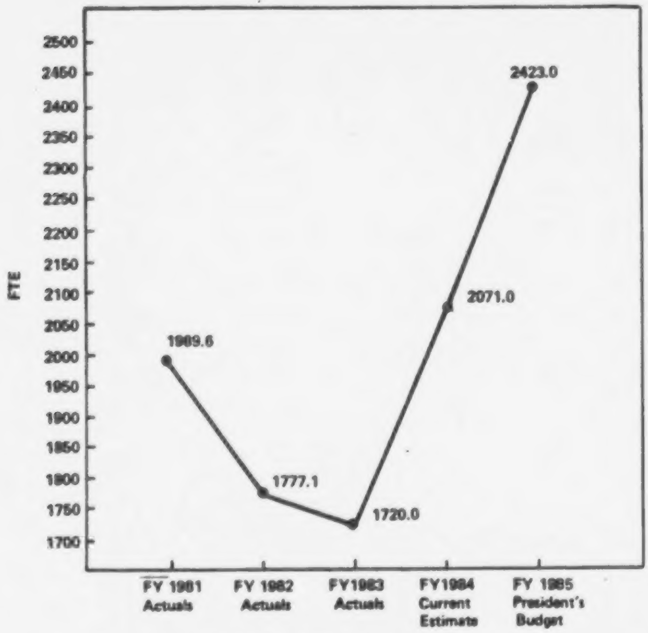
- IN FY 1985, RESOURCES DEVOTED TO RCRA ENFORCEMENT WILL BE MORE THAN THREE TIMES THAT IN FY 1983. THESE INCREASES WILL ENABLE THE AGENCY TO:
  - EXPAND INSPECTIONS FOR COMPLIANCE WITH GROUNDWATER MONITORING REQUIREMENTS;
  - ENSURE THAT ALL MAJOR INTERIM STATUS FACILITIES HAVE ADEQUATELY PLANNED E.G. FOR CLOSURE ACTIVITIES AND GROUNDWATER MONITORING; AND
  - TAKE ADDITIONAL ENFORCEMENT ACTION AGAINST NON-COMPLYING FACILITIES.
- IN FY 1985, RESOURCES DEVOTED TO SUPERFUND ENFORCEMENT WILL ALSO BE MORE THAN THREE TIMES THAT IN FY 1983. EMPHASIS WILL BE ON EFFORTS TO SECURE PRIVATELY-FINANCED RESPONSE AT NATIONAL PRIORITY LIST SITES, INCLUDING DIOXIN SITES.

OTHER SPECIFIC ACTIVITIES THAT WILL INCREASE IN FY 1985:

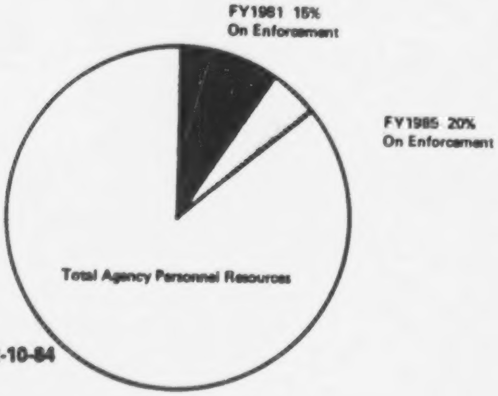
- COMPLIANCE MONITORING AND ENFORCEMENT PROGRAMS FOR:
  - PCBs AND ASBESTOS IN SCHOOLS
  - NATIONAL MUNICIPAL POLICY (NPDES COMPLIANCE)
  - PRETREATMENT ACTIVITIES;
- PRETREATMENT IMPLEMENTATION; AND
- ASSISTANCE TO STATES IN ISSUING NPDES PERMITS.

ENFORCEMENT RESOURCES HAVE BEEN INCREASED SIGNIFICANTLY

. . . In Absolute Terms



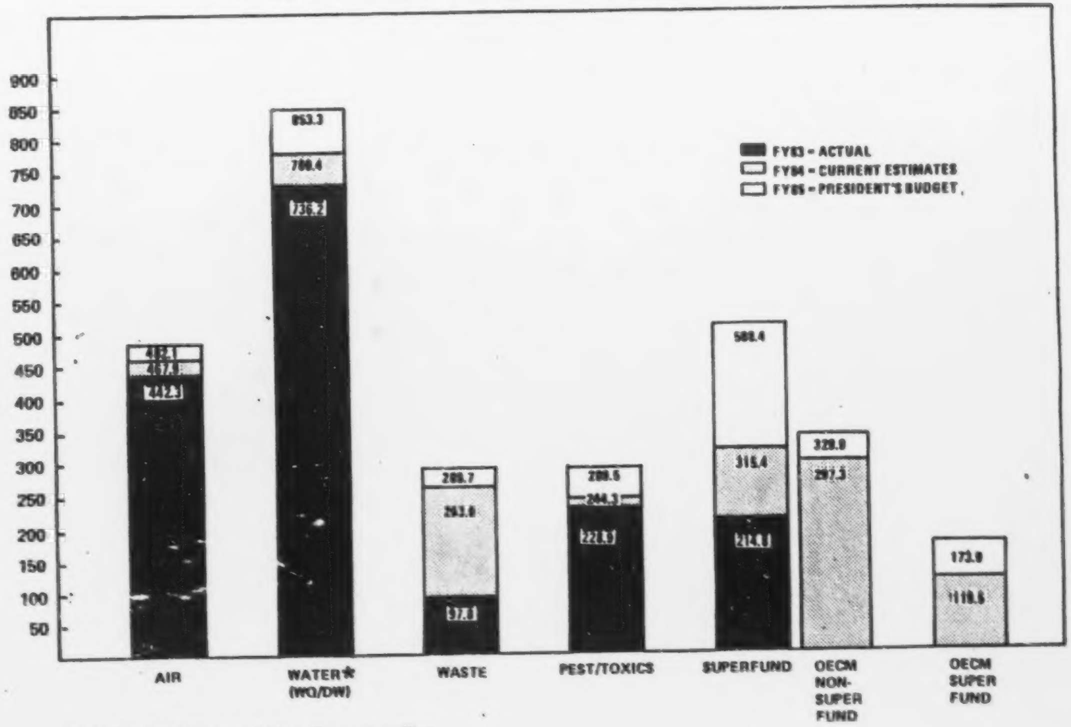
. . . And As A Proportion of Total Agency Resources



SOURCE: Office of the Comptroller 02-10-84

TOXICS AND WASTE
GET GREATEST INCREASES IN ENFORCEMENT RESOURCES

FY83-85 Enforcement Resources by Program



SOURCE: Office of the Comptroller

*INCLUDES PERMITS

VI ACTION: WHAT STEPS HAVE BEEN TAKEN?

- SUCCESS OF MANAGEMENT RESPONSE
- HIGHLIGHTS OF OTHER KEY ACTIONS

A. SUCCESS OF OUR MANAGEMENT RESPONSE

- o WE'VE SET THE DIRECTION
  - STRATEGIES ARE IN PLACE AND THE PROCESS OF DEVELOPING COMPLIANCE AND ENFORCEMENT STRATEGIES, WILL BECOME PART OF STRATEGIC PLANNING AND MANAGEMENT SYSTEM -- REFLECTED IN AGENCY OPERATING GUIDANCE
  - GAPS IDENTIFIED IN STRATEGIES ARE BEING FILLED:
    --PRETREATMENT PROGRAM SHORT-TERM ENFORCEMENT STRATEGY COMPLETED; LONGER-TERM STRATEGY IS UNDER DEVELOPMENT;
    --CONTINUOUS COMPLIANCE STRATEGY FOR AIR PROGRAM COMPLETED
- o WE'VE SET THE MEASURES
  - WE INTRODUCED LISTS OF SIGNIFICANT NON-COMPLIERS AND ARE TRACKING COMMITMENTS TO ACHIEVE COMPLIANCE
  - WE ARE NOW CONSISTENTLY MEASURING ACTUAL RATES OF PHYSICAL COMPLIANCE -- NOT JUST COMPLIANCE WITH SCHEDULES
- o WE'VE TAKEN SUCCESSFUL REMEDIAL MANAGEMENT ACTIONS
  - SECOND QUARTER ENFORCEMENT ACTIVITY SHOWS A DOUBLING OF ADMINISTRATIVE AND TRIPLING OF REFERRAL ACTIVITY OVER FIRST QUARTER LEVELS
- o WE'RE BUILDING A LONG-TERM PARTNERSHIP WITH THE STATES
  - AGENCY OPERATING YEAR GUIDANCE CALLED FOR STATE/FEDERAL ENFORCEMENT "AGREEMENTS" BY THE BEGINNING OF FY 85. OECM IS CHAIRING A STATE/FEDERAL STEERING COMMITTEE THAT IS OVERSEEING DEVELOPMENT OF SPECIFIC CRITERIA AND GUIDANCE FOR STATE/FEDERAL OVERSIGHT AND FOR DIRECT FEDERAL ACTION, INCLUDING RESPONSE GUIDANCE FOR TIMELY AND APPROPRIATE ENFORCEMENT ACTION
  - STATE REPORTING WILL BECOME PART OF MANAGEMENT ACCOUNTABILITY SYSTEM FOR ALL PROGRAMS BY THE BEGINNING OF FY 1985

B. HIGHLIGHTS OF OTHER KEY ACTIONS

- PENALTY POLICY--IN SEARCH OF IMPROVED DETERRENCE TO NON-COMPLIANCE -- HAS BEEN ISSUED AND CLEAR GUIDANCE IS UNDER DEVELOPMENT BY EACH PROGRAM.

- BUDGET TASK FORCE HAS BEEN FORMED TO ENSURE A WELL INTEGRATED ENFORCEMENT BUDGET, TO BE INCORPORATED IN THE FY 86 BUDGET.

- INNOVATIVE ENFORCEMENT AND COMPLIANCE APPROACHES ARE BEING DEVELOPED:
  - GEOGRAPHIC INITIATIVE
  - ENVIRONMENTAL AUDITING
  - INSPECTION TARGETING

- CAREFUL TRACKING AND FOLLOW-UP TO ENFORCEMENT
  - CONSENT DECREE TRACKING SYSTEM IS IN PLACE
  - WE ARE DEFINING MILESTONES FOR TIMELY ENFORCEMENT RESPONSE TO VIOLATIONS, FOLLOW-UP, AND ESCALATION AS APPROPRIATE

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

JUN 26 1984

OFFICE OF
THE ADMINISTRATOR

MEMORANDUM

SUBJECT: Implementing the State/Federal Partnership in Enforcement: State/Federal Enforcement "Agreements"

FROM: Alvin L. Alm Alvin L. Alm
Deputy Administrator

TO: Assistant Administrators
Regional Administrators
Regional Enforcement Contacts
Steering Committee on the State/Federal Enforcement Relationship
Associate Administrator for Regional Operations

I am pleased to transmit to you a copy of the Agency's Policy Framework for State/Federal Enforcement "Agreements." This document, along with the program specific guidance identified in the Appendix to the Policy, will provide the basis for implementing an effective State/Federal enforcement relationship through national program guidance and Regional/State "agreements." The Policy Framework and related program guidance reflect an extraordinary effort for which I commend the members of the Steering Committee on the State/Federal Enforcement Relationship and staff of the Office of Enforcement and Compliance Monitoring.

The Policy Framework clearly identifies oversight criteria and measures for assessing good compliance and enforcement program performance, criteria for direct federal enforcement, notification and consultation protocols, and state reporting requirements. In addition, each media program has succeeded in identifying what constitutes timely and appropriate enforcement response. When fully developed and implemented, these State-specific enforcement "agreements" should result in significant improvements in the combined capacity of the States and EPA to achieve and maintain high levels of continuing compliance and to sustain a stable, predictable enforcement presence.

I have informed the State Associations and the members of the Steering Committee that I personally intend to see that each Region and program follows through in applying the guidance provided by the Policy Framework and national program guidance in the form of "agreements" Regions will be formulating with the States. The success of these efforts will depend largely on the continued support and attention of Regional and Headquarters senior management. We are making a substantial commitment to strengthening the State/Federal enforcement relationship and our investment in this partnership should continue to grow with the development of the "agreements." Our experience over the next fiscal year will provide us with valuable feedback which will better enable us to refine the Policy Framework, our national program guidance, and the "agreements" themselves.

Specifically, to ensure the success of this effort I ask:

- Assistant Administrators:
  - to issue final program guidance by June 30 in conformance with the Policy Framework;
  - to report to me by July 16, 1984 on how existing information and management systems will be used to follow progress of cases against milestones for timely and appropriate enforcement action; and
  - to continue to provide staff support to Regions, answering questions and providing support throughout the process.
- Regional Administrators:
  - to have "agreements" in place by the beginning of FY 1985 and submit to OECM summary indices of where the "agreements" can be located;
  - to submit copies of one sample "agreement" per Region to OECM before the first quarter of FY 1985 so OECM can transfer useful ideas from one Region to another; and
  - to surface significant problems to OECM for senior management attention.
- Office of Enforcement and Compliance Monitoring:
  - to monitor our progress in implementing these "agreements," raising issues and problems as appropriate, reporting to me on progress, and fielding questions on the process;
  - to implement the communications strategy e.g., distributing copies to States through State Associations;

- to review and recommend to me refinements to the Policy Framework and "agreements" process, as necessary, by April 15, 1985 in consultation with the Steering Committee; and
- to provide leadership and staff support to the Steering Committee on long-term issues that were identified by them.

Attachments

This is an extremely important step. I would appreciate all of you giving this Policy Framework your personal attention.

POLICY FRAMEWORK FOR STATE/EPA ENFORCEMENT "AGREEMENTS"

Achieving and maintaining a high level of compliance with environmental laws and regulations is one of the most important goals of federal and state environmental agencies, and is an essential prerequisite to realizing the benefits of our regulatory programs. While States and local governments have primary responsibility for compliance and enforcement actions within delegated or approved States, EPA retains responsibility for ensuring fair and effective enforcement of federal requirements, and a credible national deterrence to non-compliance. An effective State/Federal partnership is critical to accomplishing these goals, particularly given limited state and federal resources. The task is difficult and one of the most sensitive in the EPA/State relationship, often compounded by differences in perspectives on what is needed to achieve compliance.

To establish an effective partnership in this area, and implement the State/Federal enforcement relationship envisioned in the Agency Oversight and Delegation policies, the Deputy Administrator has called for State-specific enforcement "agreements" to be in place by the beginning of FY 1985 which will ensure there are: (1) clear oversight criteria, specified in advance, for EPA to assess good State --or Regional-- compliance and enforcement program performance; (2) clear criteria for direct federal enforcement in delegated States with procedures for advance consultation and notification; and (3) adequate State reporting to ensure effective oversight.

This document is the Agency's policy framework for implementing an effective State/Federal enforcement relationship through national program guidance and Regional/State "agreements". It is the product of a Steering Committee effort involving all major national EPA compliance and enforcement program directors, State Associations, State officials from each of the media programs, and the National Governor's Association. EPA anticipates that the relationship, and the use of the "agreements" first established in FY 1985, will evolve and improve over time. They will be reviewed and updated where necessary on an annual basis. There are several areas which the Steering Committee identified for longer term evaluation and development. The policy framework also will be subject to mid-course review and possible refinement during FY 1985.

Policy Framework Overview

The policy framework applies both to headquarters program offices in their development of national guidance and to Regions in tailoring program guidance to State-specific needs and "agreements." The policy framework is divided into six sections, to address the following key areas:

A. State/Federal Enforcement "Agreements": Form, Scope and Substance (pages 4-7)

This section sets forth the priorities for Regions and States to develop enforcement "agreements," the areas that should be discussed and the degree of flexibility that Regions have in tailoring national guidance to state-specific circumstances.

B. Oversight Criteria and Measures: Defining Good Performance (pages 8-14)

This section is primarily addressed to EPA's national programs, setting forth criteria and measures for defining good performance generally applicable to any compliance and enforcement program whether administered by EPA or a State. It forms the basis for EPA oversight of State programs. A key new area that should receive careful review is the definition of what constitutes timely and appropriate enforcement response, Section B, Criterion #5, pages 11-13.

C. Oversight Procedures and Protocols (pages 15-16)

This section sets forth principles for EPA's approach and process for and follow-up to our oversight responsibilities.

D. Criteria for Direct Federal Enforcement in Delegated States (pages 17-20)

This section sets forth the factors EPA will consider before taking direct enforcement action in a delegated State and what States may reasonably expect of EPA in this regard including the types of cases and consideration of whether a State is taking timely and appropriate enforcement action. It also establishes principles for how EPA should take enforcement action so that we can be most supportive of strengthening State programs.

E. Advance Notification and Consultation (pages 21-23)

This section sets forth EPA's policy of "no surprises" and what arrangements must be made with each State to ensure the policy is effectively carried out by addressing planned inspections, enforcement actions, press releases, dispute resolution and assurances that publicly reported performance data is accurate.

F. State Reporting (pages 24-28)

This section sets forth seven key measures EPA will use, at a minimum, to manage and oversee performance by Regions and States. It summarizes state and regional reporting requirements for: (1) compliance rates; (2) progress in reducing significant non-compliance; (3) inspection activities; (4) formal administrative enforcement actions; and (5) judicial actions, at least on a quarterly basis. It also discusses required commitments for inspections and for addressing significant non-compliance.

In addition, it sets forth state and regional requirements for recordkeeping and evaluation of key milestones to assess the timeliness of their enforcement response and penalties imposed through those actions.

Appendix

The Appendix provides a summary index of what national program guidance has been or will be issued by programs to address the areas covered by the Policy Framework for State/EPA Enforcement "Agreements."

A. STATE/FEDERAL ENFORCEMENT "AGREEMENTS": FORM, SCOPE, AND SUBSTANCE

This section sets forth the form, scope and substance of the State/Federal Enforcement "Agreements" as well as the degree of flexibility Regions have in tailoring national policy to individual States.

1. What Form Should the "Agreements" Take?

We do not anticipate the need for a new vehicle or document for the State/Federal enforcement "agreements." Wherever possible, State/Federal "agreements" should be set forth in one or more of a number of existing formats: grant agreements, State/EPA Agreements, Memoranda of Agreement or Understanding or a statement of Regional Office operating policy. To the extent the areas covered by this policy framework translate into specific output commitments and formal reporting requirements, they may belong in the grant agreements as specified in national program grant guidance.

2. What is the Scope of the "Agreements"?

This guidance and the State/EPA "agreements" cover all aspects of EPA's civil compliance and enforcement programs, including those activities involving federal facilities. The criminal enforcement program is not included and will be addressed elsewhere.

Discussions between EPA Regions and States should cover the minimum areas listed below:

- o Oversight Criteria and Measures: Good Performance Defined --See Section B.
- o Oversight Procedures and Protocols -- See Section C.
- o Criteria for Direct EPA Enforcement -- See Section D.
- o Procedures for Advance Notification and Consultation -- See Section E.
- o Reporting Requirements -- See Section F.

However, Regions and States are not expected to duplicate national program guidance in their "agreements" -- we are not looking for lengthy documents. Written "agreements" resulting from these discussions would cover topics which are not clearly specified elsewhere. If not otherwise specified, national policy will apply and should be so stated in the state "agreements."

For FY 1985, the Regions and States should reflect the following priorities in discussions and "agreements":

- Defining expectations for timely and appropriate enforcement action -- particularly: (a) establishing a management framework with the State for following progress for significant non-complier cases against timely and appropriate milestones; and (b) identifying where penalties or equivalent sanctions are important;
- Reporting of State data -- ensuring timeliness and resolving definitional and quality control problems in reported data; and
- Establishing Protocols for Advance Notification and Consultation.

Oversight criteria would generally be provided in national program guidance but Regions may need to tailor definitions of timely and appropriate action and other specific areas of concern that are unique to an individual State, including areas targeted for improvement. Similarly, while this document sets forth general criteria for direct EPA enforcement, programs and Regions may need to tailor the criteria not only to define timely and appropriate enforcement action, but also to address environmental and other priorities of the program, Region or State.

Each "agreement" should be careful to note that nothing in them would constitute or create a valid defense to regulated parties in violation of environmental statutes, regulations or permits.

3. What Flexibility do Regions Have?

Regions must be allowed substantial flexibility to tailor "agreements" to each state. However, that flexibility should be exercised within the framework of national program policy and the Agency's broad objectives. Specifically,

Definitions: Regions should reach agreement with States as to how certain state enforcement actions will be reported to and interpreted by EPA. This should be based upon the essential characteristics and impact of state enforcement actions and not merely upon what the actions are called. Where penalties are required, for example, state actions for equivalent sanctions also are acceptable. National program guidance setting forth consistent criteria for this purpose should be followed. Also, see the discussion in Section B. pages 11-13.

Timeliness: The national program guidance on key milestones and timeframes should be applied to all States with adjustments to accommodate each state's laws and procedures. Such adjustments can be important particularly where the proposed enforcement action cannot possibly take place within the proposed timeframes or where a State chooses to address problems more expeditiously than the federal guidelines. Other adjustments should not be made solely because a state program consistently takes longer to process these actions due to constraints other than procedural requirements, e.g., resources. However, if this is the case the timeframes should serve as a basis for reviewing impediments with the State to identify how problems can be overcome and to explore ways over time for the state program to perform more efficiently.

The timeframes are not intended to be rigid deadlines for action, but rather are: (1) general targets to strive for in good program performance; (2) trigger points that EPA and States should use to review progress in individual cases; and (3) presumptions that, if exceeded, EPA may take direct enforcement action after consideration of all pertinent factors and consultation with the State. It is not the Agency's intention to assume the major enforcement role in a delegated State as a result of these timeframes. The trigger points should be realistic expectations, but within modest variance from the national goals. It must also be realized that in some programs we need experience with the timeframes to assess how reasonable and workable they really are and further, that judgments on what is a reasonable timetable for action must ultimately be case specific. For example, complex compliance problems may require longer-term studies to define or achieve an appropriate remedy.

Appropriate Enforcement Response: National program guidance on appropriate enforcement response should be followed. There is usually sufficient flexibility within such guidance to allow the exercise of discretion on how best to apply the policies to individual cases. The Agency is making every effort to set forth a consistent national policy on enforcement response for each program. It is therefore essential that in setting forth clear expectations with States that this guidance not be altered. For example, program guidance should not be altered simply because of differing State views on where penalties should be assessed. State actions imposing equivalent sanctions, however, are acceptable e.g., license revocation. Further, with limited exceptions noted on page 18, EPA will not override a State action based upon penalty amounts in the absence of clear guidance applicable to both States and Regions. See discussion in Section D. page 18.

Procedures and Protocols: Regions and States should have maximum flexibility to fashion arrangements that are most conducive to a constructive relationship, following the broad principles outlined in this document.

Adjusting outputs and commitments to State resources: Because the FY 1985 Budget has already been developed, the Oversight Criteria and Protocols should be implemented so as not to impose additional resource requirements or expected output levels for FY 1985 beyond those already established for States. This does not apply to the minimum reporting requirements identified by the Steering Committee to ensure effective oversight. In FY 1985 this policy framework is intended to affect how we do business, not how much of it we do. In addition, while of necessity EPA must emphasize commitments by States to address significant non-compliance and major sources of concern, Regions should be sensitive to the broad concerns of State programs including minor sources and the need to be responsive to citizen complaints.

4. What Does it Mean to Reach "Agreement"?

To the extent possible, these "agreements" should reflect mutual understandings and expectations for the conduct of federal and state enforcement programs. Agreement may not be possible in all States. At a minimum, EPA Regions must: (1) be clear and ensure there are "no surprises"; (2) make arrangements with the States so that actions taken are constructive and supportive; and (3) tailor the application of the national program guidance to the States' programs and authorities. Where mutual agreement cannot be achieved, clear unilateral statements of policy will have to suffice, with commitments to try to seek further agreements over time. Areas where agreements have not been reached should be clearly identified for senior Agency management attention.

B. OVERSIGHT CRITERIA AND MEASURES: DEFINING GOOD PERFORMANCE

The first step to achieving strong and effective national compliance and enforcement programs is a clear definition of what constitutes good performance. Because each of EPA's programs embodies unique requirements and approaches, good performance must be defined on a program-specific basis. Adjustments also must be made in applying criteria and measures to the States and Regions, based upon their environmental problems and authorities. Nevertheless, there are several basic elements which will generally be applicable to a good compliance and enforcement program in any of our media-specific programs. The following outlines the criteria and measures that form that common framework for defining a quality program. The framework is to serve as a guide to the national programs as they develop, in cooperation with Regions and States, the criteria they will use to assess their performance in implementing national compliance and enforcement programs.

The framework is not intended to be adopted word-for-word by the programs, nor is there any format implied by this list. What is important are the concepts. This section addresses only the elements of a quality program. Issues such as how oversight should be conducted are addressed in section C. Each national program may choose to focus on certain elements of performance in a given year.

These criteria and measures are intended to apply to the implementing agency, that is, to an approved or delegated State or to an EPA Region in the event a program is not "delegated." Our philosophy is that EPA should be held to the same standards as we would apply to the States if they were implementing the program. Portions may also apply to those non-approved or non-delegated States which are administering portions of the programs under cooperative agreements.

CRITERION #1 Clear Identification of and Priorities for the Regulated Community

A quality compliance and enforcement program is based upon an inventory of regulated sources which is complete, accurate and current. The data should in turn be accessible, preferrably in automated data systems which are accurate, and up-to-date. The scope of coverage for the inventory should be appropriately defined by each program as it is probably not feasible to identify every person or facility subject to environmental laws and regulations, especially when they are numerous small sources. Those priorities should be clearly established in national program guidance and tailored to State-specific circumstances as appropriate.

The inventory of sources should be utilized as a basis for a priority setting system established by the administering agency. These priorities should reflect and balance both national priorities and state-specific priorities. A quality program uses those priorities as a basis for program management. National priorities are generally set forth in EPA's Operating Year Guidance and program specific compliance and enforcement strategies. State-specific priorities should address not only efforts to achieve broad based compliance but also should assess the expected environmental impact of targeting enforcement and compliance monitoring to specific geographic areas or against certain source types. Ambient monitoring systems can provide an important point of departure for priority setting.

CRITERION #2 Clear and Enforceable Requirements

Requirements established through permits, administrative orders and consent decrees should clearly define what a specific source must do by a date certain, in enforceable terms. It is not EPA's intention in this policy framework to suggest that EPA conduct a top down review of a State or Regional program's entire regulatory program. However, areas where provisions cannot be enforced due to lack of clarity or enforceable conditions should be identified and corrected.

CRITERION #3 Accurate and Reliable Compliance Monitoring

There are four objectives of compliance monitoring:

- reviewing source compliance status to identify potential violations;
- helping to establish an enforcement presence;
- collecting evidence necessary to support enforcement actions regarding identified violations; and
- developing an understanding of compliance patterns of the regulated community to aid in targeting activity, establishing compliance/enforcement priorities, evaluating strategies, and communicating information to the public.

The two factors in assessing the success of a compliance monitoring program are coverage and quality.

Coverage: Each program's strategy should reflect a balance between coverage: (1) for breadth, to substantiate the reliability of compliance statistics and establish an enforcement presence; and (2) for targeting those sources most likely to be out of compliance or those violations presenting the most serious environmental or public health risk.

Inspections: Each administering agency should have a written and reviewable inspection strategy, reviewed and updated annually, as appropriate: in some programs a multi-year strategy may be preferable. The strategy should demonstrate the minimum coverage for reliable data gathering and compliance assessment set forth in national program guidance and meet legal requirements for a "neutral inspection scheme". The strategy should also address how the inspections will most effectively reach priority concerns and potential non-compliers including the use of self reported data, citizen complaints and historic compliance patterns. The strategy will be assessed on whether it embodies the appropriate mix of categories of inspections, frequency and level of detail. Inspections should then be carried out in a manner consistent with the inspection strategy.

Source Self-Monitoring and Reporting: The administering agency should ensure that minimum national requirements for source self-monitoring and reporting are imposed and complied with, either through regulation or permit condition, pursuant to national guidance as appropriate.

Quality: Each program should define minimum standards for quality assurance of data and data systems, and timely and complete documentation of results. At a minimum, each program should have a quality assurance program to insure the integrity of the compliance monitoring program. This quality assurance program should address essential lab analysis and chain of custody issues as appropriate.

Inspections: Inspectors should be able to accurately determine the nature and extent of violations, particularly the presence of significant violations. Documentation of inspection findings should be timely, complete and able to support subsequent enforcement responses, as appropriate to the purpose of the inspection. Federal oversight inspections should corroborate findings. Oversight inspections are a principal means of evaluating both the quality of an inspection program and inspector training.

Source Self Monitoring: The administering agency should have a strategy for and implement quality assurance procedures, with sufficient audits and follow-up action to ensure the integrity of self-reported data.

CRITERION #4 High or Improving Rates of Continuing Compliance

The long-term goal of all of our compliance and enforcement programs is to achieve high rates of continuing compliance across the broad spectrum of the regulated community. Until that goal is achieved, compliance rates can fluctuate for several reasons. In assessing how well an administering agency is meeting the goal of high or improving rates of compliance, other factors must be assessed in addition to the overall compliance rate. Improved inspections or inspection targeting often can result in a temporary decrease in rates of compliance until newly found violations are corrected and the regulated community responds to the more vigorous attention to specific compliance problems. In these instances, a decrease in the rate of compliance would be a sign of a healthy compliance and enforcement program. At a minimum, programs should design mechanisms to track the progress of all sources out of compliance through major milestones up to achieving final physical (full) compliance with applicable regulations and standards.

Program quality must also be assessed in terms of how well the program is returning significant non-compliers to compliance. The use of lists of significant violators and specific commitments to track and resolve significant non-compliance should be part of the planning process of the administering agency, and, between States and Regions. The lists should be developed and continually updated each fiscal year and sources on it tracked through to final physical compliance.

CRITERION #5 Timely and Appropriate Enforcement Response

Quality enforcement programs ensure that there is timely and appropriate enforcement response to violations. Expectations for what constitutes timely and appropriate action should be based upon national program guidance, tailored to the procedures and authorities in a given State and assessed in regard to particular circumstances surrounding each instance of violation. National programs must establish benchmarks or milestones for what constitutes timely and appropriate enforcement action, forcing progress in enforcement cases toward ultimate resolution and full physical compliance. This concept is a key new feature to our compliance and enforcement program implementation.

In designing oversight criteria for timely enforcement response, each program will attempt to capture the following concepts:

1. A set number of days from "detection" of a violation to an initial response. Each program should clearly define when the clock starts, that is, how and when a violation is "detected."

2. Over a specified period of time, a full range of enforcement tools may be used to try to achieve compliance, including notices of violation, warning letters, phone calls, site visits, etc.. The adequacy of these responses will be assessed based upon whether they result in expeditious compliance.

3. A prescribed number of days from initial action within which a determination should generally be made, that either compliance has been achieved or an administrative

enforcement action has been taken (or a judicial referral has been initiated, as appropriate) that, at a minimum:

- Explicitly requires recipient to take some corrective/remedial action, or refrain from certain behavior, to achieve or maintain compliance;
- Explicitly is based on the issuing Agency's determination that a violation has occurred;
- Requires specific corrective action, or specifies a desired result that may be accomplished however the recipient chooses, and specifies a timetable for completion;
- May impose requirements in addition to ones relating directly to correction (e.g., specific monitoring, planning or reporting requirements); and
- Contains requirements that are independently enforceable without having to prove original violation and subjects the person to adverse legal consequences for non-compliance.

4. A specific point at which a determination is made either that final physical compliance has been achieved, that the source is in compliance with a milestone in a prior order, or that escalation to a judicial enforcement action has been taken if such actions have not already been initiated.

   In developing program-specific guidance, this milestone may be treated more as a concept than as a fixed timetable. This is because often times the process is out of the control of the administering agency, e.g., the administrative hearing process or the State Attorney General's action. What is important, is the embodiment of the concept of timely follow-up and escalation, in requirements for tracking and management.

5. Final physical compliance date is firmly established and required of the facility. Although it is not possible for programs to establish any national timeframes, the concept of final physical compliance by a date certain should be embodied in EPA and State enforcement actions.

6. Expeditious physical compliance is required. It may not be possible for programs to define "expeditious" in terms of set time periods, but some concept of "expeditious" (i.e., that the schedule will result in a return to full physical compliance as quickly as can reasonably be expected) should be embodied in each program's guidance.

Timeframes established by the national programs for each of these minimum milestones are principally intended to serve as trigger points and not as absolute deadlines, unless specifically defined as such. Whatever timeframes are established are intended to apply only to federal requirements as adopted by the States, and do not apply to state statutes and requirements that go beyond those required by federal law. The timeframes are key milestones to be used to manage the program, to trigger review of progress in specific cases, and a presumption of where EPA may take direct enforcement action after consideration of all pertinent factors and consultation with the State.

Timeframes and their use in management will evolve over time as they will have to reflect different types of problems that may warrant different treatment. For example, programs will have to take into account such factors as new types of violations, the difference between operating and maintenance violations versus those that require installation of control equipment, emergency situations which may fall outside the scope of the normal timeframes for action, etc.

Administering agencies are expected to address the full range of violations in their enforcement responses considering the specific factors of the case and the need to maintain a credible enforcement presence. However, the new management approach setting forth desired timeframes for timely action could have resource implications beyond what is currently available to or appropriate for the full range of sources and violations. Therefore, as we begin to employ the concept of timely and appropriate enforcement response, at a minimum, the focus should be on the greatest problems, i.e., the significant non-compliers. Over time, and with more experience, this concept should be phased-in to cover a broader range of violations. This in no way should constrain the programs from applying the concepts broadly.

The choice of appropriate response is to be defined by each national program and applied by the administering agency based upon consideration of what is needed: (1) in general, to achieve expeditious correction of the violation, deterrence to future non-compliance and fairness; and (2) in individual circumstances, based upon the gravity of the violation, the circumstances surrounding the violation, the source's prior record of compliance and the economic benefits accrued from non-compliance. With three exceptions, the form of the enforcement response is not important by itself, as long as it achieves the desired compliance result. The exceptions generally fall into the following three categories:

1. If compliance has not been achieved within a certain timeframe, the enforcement response should meet minimum requirements, usually associated with at least the issuance of an administrative order (see criteria listed above) or judicial referral.

2. Because of the need to create a strong deterrence to non-compliance, it is important to assess penalties in certain cases, and only certain enforcement vehicles can provide penalties. Each program must clearly define, as appropriate, the circumstances under which nothing less than a penalty or equivalent sanction will be acceptable.

3. In some circumstances, a judicial action or sanction is usually the only acceptable enforcement tool. Each program must define these circumstances as appropriate. For example, a judicial action might be required where a compliance schedule for federal requirements goes beyond federal statutory deadlines.

A good program should have adequate legal authority to achieve the above objectives. Where deficiencies have been identified, steps should be taken to fill identified gaps.

CRITERION #6 Accurate Recordkeeping and Reporting

A quality program maintains accurate and up-to-date files and records on source performance and enforcement responses that are reviewable and accessible. All recordkeeping and reporting should meet the requirements of the quality assurance management policy and procedures established by each national program consistent with the Agency's Monitoring Policy and Quality Assurance Management System. Reports from States to Regions, Regions to Headquarters must be timely, complete and accurate to support effective program evaluation and priority setting.

CRITERION #7 Sound Overall Program Management

A quality program should have an adequate level, mix and utilization of resources, qualified and trained staff, and adequate equipment. The intention here is not to focus on resource and training issues unless there is poor performance identified elsewhere in the program. In those instances, these measures can provide a basis for corrective action by the administering agency. There may be, however, some circumstances in which base level of trained staff and equipment can be defined by a national program where it will be utilized as an indicator of whether the program is adequate.

Similarly, a good compliance and enforcement program should have a clear scheme for how the operations of other related organizations, agencies and levels of government fit into the program. Again, this is a matter which would be given attention to the extent problems have been identified.

C. OVERSIGHT PROCEDURES AND PROTOCOLS

This section addresses how EPA should conduct its oversight function, its approach, process and follow-up, to build and improve individual programs and overall national performance.

1. Approach

The goal of oversight should be to improve the state (or Regional) compliance and enforcement program. To accomplish this, oversight should be tailored to fit State performance and capability. The context must be the whole state compliance and enforcement program, although EPA's focus for audit purposes will be on national priority areas.

No new oversight process is intended here. Existing procedures such as mid-year reviews, periodic audits and oversight inspections as established by each program and Region should be used. However, EPA oversight of state performance should be consistent with the following principles:

a. Positive oversight findings should be stressed as well as the negative ones.

b. Positive steps that can be taken to build the capability of state programs in problem areas should be emphasized. This should include providing technical assistance and training -- by EPA staff to the extent possible.

c. EPA action to correct problems should vary, depending on the environmental or public health effect of the problem and whether it reflects a single incident or a general problem with the state program.

d. Feedback between the States and EPA should be a two-way street. The States should be given an opportunity to comment on EPA's performance.

e. EPA should give States sufficient opportunity to correct identified problems, and take corrective action pursuant to the criteria for direct enforcement established in Section D.

f. EPA should use the oversight process as a means of transferring successful regional and state approaches from one Region or State to the other.

2. Process

Several actions can result in the most constructive review of the State's programs:

a. To the extent possible, files to be audited will be identified in advance, with some provision for random review of a percentage of other files if necessary.

b. Experienced personnel should be used to conduct the audit/review -- EPA staff should be used to the extent possible to build relationships and expertise.

c. There should be an exit interview and every opportunity should be made to discuss findings, comment on and identify corrective steps based upon a review draft of the written report.

d. Opportunity should be made for staffs interacting on enforcement cases and overseeing State performance to meet personally rather than rely solely upon formal communications -- this applies to both technical and legal staffs.

3. Follow-Up and Consequences of Oversight

When State performance meets or exceeds the criteria and measures for defining good program performance, EPA should, reward this performance in some of the following ways:

a. reduce the number, level or scope, and/or frequency of reviews or of some reporting requirements consistent with statutory or regulatory requirements;

b. reduce the frequency and number of oversight inspections; and

c. allow the program more flexibility in applying resources from an almost exclusive focus on national priorities e.g., major sources, to addressing more priorities of concern to the State e.g., minor sources.

When State performance fails to meet the criteria for good state performance, EPA may take some of the following actions, as appropriate:

a. suggest changes in State procedures;

b. suggest changes in the state's use of resources or training of staff;

c. provide technical assistance;

d. increase the number of oversight inspections and/or require submittal of information on remedial activities;

e. provide other workable state models and practices to States with problems in specific areas and match state staff with expertise in needed area;

f. if state enforcement action has not been timely and appropriate, EPA may take direct enforcement action;

g. grant awards could be conditioned by targeting additional resources to correct identified problems or reduced based on poor performance where such performance is not due to inadequate resources; and/or

h. consider de-delegation if there is continued poor performance.

D. CRITERIA FOR DIRECT FEDERAL ENFORCEMENT IN DELEGATED STATES

This section addresses criteria defining circumstances under which approved State programs might expect direct federal enforcement action and how EPA will carry out such actions so as to be most supportive of strengthening State programs.

1. When Might EPA Take Direct Enforcement Action?

A clear definition of roles and responsibilities is essential to an effective partnership. In delegated programs, primary responsibility for action resides with State or local governments with EPA taking action principally where a State is "unwilling or unable" to take "timely and appropriate" enforcement action. Many States view it as a failure of their program if EPA takes an enforcement action. This is not the approach or view adopted here. There are circumstances in which EPA may want to support the broad national interest in creating an effective deterrent to non-compliance beyond what a State may need to do to achieve compliance in an individual case or to support its own program.

Because States have primary responsibility and EPA clearly does not have the resources to take action on or to review in detail any and all violations, EPA will circumscribe its actions to the areas listed below and address other issues concerning State enforcement action in the context of its broader oversight responsibilities. Following are factors which EPA will consider in deciding whether to take direct action:

Type of Case

a. Violation of EPA order or consent decree

b. State requests EPA action

c. Cases specifically designated as nationally significant (e.g., significant non-compliers, explicit national or regional priorities)

d. Legal precedents

e. Interstate issues

f. Significant environmental or public health damage or risk involved

g. Significant economic benefit gained by violator

h. Repeat violators

i. Areas where State authority may be inadequate

Based on this general guidance, each program office may develop more specific guidance on the types of violations on which EPA should focus.

Timely and Appropriate Action by the State

The fact that a case may fit into one of the categories listed above does not mandate nor imply that EPA will take enforcement action. Several factors must be taken into account including the judgment of EPA staff, the availability of EPA resources, and a determination of whether the State has taken or can take timely and appropriate enforcement action as defined by national program guidance and State/Regional "agreements." These considerations are determining factors for cases falling within the following criteria: (c) national priorities; (e) interstate issues; (f) significant environmental damage or health effects; or (g) significant economic benefit. In the case of (h) repeat violators, Regions must assess whether the State response is likely to prove effective given the pattern of repeat violations and prior history of responses.

For types of violations based upon criteria: (a) violations of EPA order or consent decrees, or (d) legal precedent, EPA action need not be tied to whether a State has or is taking "timely and appropriate action." These are limited exceptions to the State-lead concept. In these circumstances, EPA should work with the State as early as possible in the case, well before completion of a State action which, if resulting in expeditious compliance by the facility, would render any subsequent EPA involvement unconstructive, ineffective or moot.

Regions also should identify, with their States, particular areas in which arrangements can or should be made, in advance, for direct EPA enforcement support where State authorities are inadequate -- (i) above -- or compliance has been a continuing problem.

Adequacy of Penalty

For types of violations identified in national program guidance as requiring a penalty or equivalent sanction, EPA generally will not consider taking direct enforcement action on the basis of the adequacy of the amount of penalty imposed unless clear national guidance has been defined, in consultation with States, and is being applied in practice in EPA Regions. EPA may, however, take direct enforcement action for recovery of additional penalties in instances in which a State penalty is determined to be grossly deficient e.g., de minimis, after considering all of the circumstances of the case and the national interest. In making this determination, EPA will give every consideration to the State's own penalty authority and any applicable State penalty policy.

In FY 1985, except for the limitation noted above, the Agency will focus on whether the State has imposed a penalty in appropriate cases and not on the amount of the penalty for the purposes of considering direct action unless guidance on penalty amounts applicable to States is in place. Where it is needed, each program will be developing more explicit guidance to both EPA Regions and States on penalty amounts to be applicable in FY 1986. State and Regional penalty assessments will, however, continue to be an area of review as EPA conducts audits and oversight of State programs.

2. How Should EPA Take Action So As To Better Support Strong State Programs?

Section E describes in some detail the principles and procedures for advance notification and consultation with States. These are imperatives for a sound working relationship. There are several other approaches identified here for how EPA can take enforcement action, where it is appropriate, in a manner which can better support States.

To the maximum extent possible, EPA should make arrangements with States to:

a. Take joint State/Federal action -- particularly where a State is responsibly moving to correct a violation but lacks the necessary authorities, resources or national or interstate perspective appropriate to the case;

b. Use State inspection or other data and witnesses, as appropriate;

c. Arrange for penalties (in part or in whole) to accrue to States -- to the extent it is legally possible to do so e.g., through joint action;

d. Involve States in creative settlements -- so that the credibility of States as the primary actor is perceived and realized;

e. Issue joint press releases and share credit with the State -- to ensure EPA is not in competition with the State and that EPA action is not erroneously perceived as a weakness or failure in the State's program; and

f. Keep States continually apprised of events and reasons for federal actions -- to avoid conflicting actions and to build a common understanding of goals and the State and federal perspectives.

3. How Do the Expectations for "Timely and Appropriate Action" Apply to EPA in Delegated States?

In delegated States, EPA performs an oversight function, standing ready to take direct federal enforcement action based upon the factors stated above. In its oversight capacity, in most cases EPA will not obtain real-time data. As indicated in Section F on State Reporting, EPA will receive quarterly reports and will supplement these with more frequent informal communications on the status of key cases. Therefore, we do not expect EPA Regions through their oversight to be able to take direct enforcement action following the exact same timeframes as those that apply to the administering agency. However, when EPA does determine it is appropriate to take direct federal action, EPA staff are expected to adhere to the same timeframes as applicable to the States starting with the assumption of responsibility for enforcement action.

E. ADVANCE NOTIFICATION AND CONSULTATION

A policy of "no surprises" must be the centerpiece of any effort to ensure the productive use of limited federal and state resources and an effective "partnership" in achieving compliance. This principle should be applied to all aspects of the compliance and enforcement program covering inspections, enforcement activities, press releases and public information, and management data summaries upon which State and national performance are assessed./1

In order to guarantee that there is ample advance notification and consultation between the proper state and federal officials, EPA Regions should confer annually with each State, discuss the following areas and devise agreements as appropriate. The agreements should be unique to each State and need not cover all areas -- so long as there is a clear understanding and discussion of how each area will be addressed.

1. Advance Notification to Affected States of Intended Inspections and Enforcement Actions

Agreements should identify:

- who should be notified, e.g.
  -- the head of the program if it involves potential federal enforcement; and
  -- who is notified of proposed/planned federal inspections.

- how the State will be notified, e.g.
  -- the agencies share inspection lists; and
  -- the agency contact receives a telephone call on a proposed federal enforcement case.

- when they will be notified -- at what point(s) in the process, e.g.
  -- when a case is being considered; and/or
  -- when a case is ready to be referred, or notice order issued.

In cases where other States or jurisdictions may be directly and materially affected by the violation, i.e., environmental or public health impacts, EPA's Regional Offices should attempt to notify all of the States that are interested parties or are affected by the enforcement action through the communication channels established by the State "agreements," working through the appropriate Regional Office. This notification process is particularly important for hazardous waste cases in which regulatees often operate across State boundaries.

/1 Note that the Policy Framework does not apply to the criminal enforcement program.

Protocols for advance notification must be established with the understanding that each party will respect the other's need for confidentiality and discretion in regard to the information being shared, where it is appropriate. Continuing problems in this regard will be cause for exceptions to the basic principle of advance notification.

Many of our statutes or regulations already specify procedures for advance notification of the State. The State/Federal "agreements" are intended to supplement these minimum requirements.

2. Establishment of a Consultative Process

Advance notification is only an essential first step and should not be construed as the desired end result of these State/Federal "agreements." The processes established should be consultative and should be designed to achieve the following:

a. Inspections

Advance notice to States through sharing of lists of planned federal inspections should be designed so that state and federal agencies can properly coordinate the scheduling of site inspections and facilitate joint or multi-media inspections as appropriate. This should generally be done for all programs whether or not they are delegated, except for investigative inspections which would be jeopardized by this process.

b. Enforcement Actions

Federal and state officials must be able to keep one another current on the status of enforcement actions against non-complying facilities. Regularly scheduled meetings or conference calls at which active and proposed cases and inspections are discussed may achieve these purposes. At any point in the process, federal officials may defer to an appropriate state response.

3. Sharing Inspection Results

The Region and State should discuss the need for a process to share, as much as practicable, inspection results, monitoring reports, evidence, including testimony, where applicable for federal and/or state enforcement proceedings.

4. Dispute Resolution

The Region and State should agree in advance on a process for resolving disputes, especially differences in interpretation of regulations or program goals as they may affect resolution of individual instances of non-compliance.

5. Press Releases and Public Information

EPA has made commitments to account publicly for its compliance and enforcement programs. EPA also has made use of press releases as a means of enhancing the deterrence potential of its enforcement actions. While state philosophies on these matters may vary, the Region and State should discuss opportunities for joint press releases on enforcement actions and public accounting of both state and federal accomplishments in compliance and enforcement.

Discussions should address how and when this coordination would take place. To the extent possible, EPA generated press releases and public information reports should acknowledge and give credit to relevant state actions and accomplishments.

6. Publicly Reported Performance Data

Regions should discuss with States mechanisms for ensuring the accuracy of data used to generate monthly, quarterly and/or annual reports on the status of state and federal compliance and enforcement activities. Opportunities should be provided to verify the accuracy of the data with the States prior to transmittal to headquarters. Time constraints may be a real limitation on what can be accomplished, but it is important to establish appropriate checks and control points if we are to provide an accurate reflection of our mutual accomplishments. If there are no data accuracy concerns these mechanisms may not be needed.

F. STATE REPORTING

This section reviews key reporting and recordkeeping requirements for management data and public reporting on compliance and enforcement program accomplishments. It also addresses related reporting considerations such as reporting frequency and quality assurance.

1. Overview

A strong and well managed national compliance and enforcement program needs reliable performance information on which to judge success and identify areas needing management attention. The following outlines the reporting and recordkeeping framework for monitoring enforcement and compliance program performance that will form the basis of EPA's FY 1985 Strategic Planning and Management System component on enforcement. The information will be used by the Agency's chief executives to manage EPA operations, and to convey our combined federal and state performance record to others outside the Agency. This framework is limited in its application to information gathered for management purposes. It is not intended to apply to the environmental data and reporting on a source-by-source basis which is gathered routinely by the Agency from Regions and States under its source reporting programs and ongoing operations. The framework should serve as a stable guide to the national programs as they develop, in cooperation with the Regions and States, the measures and reporting requirements they will use to assess performance in implementing national compliance and enforcement programs.

In FY 1985 we will use five measures of compliance and enforcement performance for reporting purposes, identified in sequence below. The first two measure compliance results: (1) overall compliance rate for the regulated community; and (2) correction of the most significant violations. The Agency is working diligently to establish clear and reliable indicators for these two measures, recognizing the desirability of managing based as much as possible on results. While it is most desirable to find ways to ultimately examine the environmental benefits of compliance and enforcement actions, i.e., pollution levels reduced, this will not be accomplished in time for the FY 1985 planning and management cycle.

The two compliance results measures are supplemented with three measures of enforcement activity: (3) inspection levels as an indicator of the reliability of compliance data and as an indicator of field presence for deterrence purposes; (4) formal administrative enforcement actions undertaken; and (5) judicial referrals and filed court cases, the latter two measures of enforcement activities both serving as indicators of enforcement strength and the will to enforce.

In addition to these five reporting requirements, the Agency is introducing two new areas of recordkeeping requirements to support general management oversight of the national enforcement effort: (1) success in meeting new management milestones for defining timely and appropriate enforcement action; and (2) the level of penalties assessed and collected. For FY 1985 records should be maintained by States and Regions for review during the course of the year and to support an assessment at the end of the year on how well the agencies have done and how appropriate performance expectations might best be defined.

2. Reported Measures of Performance

Programs and Regions should ensure the first five measures of performance are required to be reported on a quarterly basis:

a. Compliance levels can be measured according to several different approaches. National program guidance should describe the approach each has selected as most appropriate given the characteristics of its program and regulated community. Each program should, at a minimum, report full physical compliance rates and also distinguish where relevant in reporting compliance levels between final "physical" compliance (compliance with emissions limits) and "paper" compliance (violation of emissions limits but following a compliance schedule).

b. Progress in Returning Significant Violations to Compliance: Each program in putting together its guidance should specifically define what it measures as significant violations. Lists of significant violators must be compiled by Region and State. The Agency has two indicators of performance in this area: one is a static measure of progress against a beginning-of-year backlog of significant violators not yet brought into compliance. The second is a dynamic balance sheet which adds to the beginning-of-year inventory any new significant violators as they are found and keeps a running tally of those for which a formal enforcement action was taken, those which were brought into compliance, or those which remain, pending enforcement action. Each program should provide for reporting against both measures.

Each program should also anticipate being required to set quarterly targets for reduction of its beginning-of-year backlog of significant violators. Targets will be set for States and Regions on the basis of either returning the violator to compliance or taking a formal enforcement action which will lead to expeditious physical (full) compliance. Reporting of progress against significant violations will be set on the basis of these same two categories of response. In developing its guidance, each program should specify the types of enforcement actions which qualify as having taken "a formal enforcement action."

c. Inspections are conducted for many purposes, including confirmation of compliance levels. Reporting on inspections has been a long standing practice. Regions and States should be asked to provide specific quarterly commitments and reporting on the number of inspections to be conducted. Where programs have broken down inspection reporting into different classes to reflect the different purposes, for example, sampling inspections, "walk-through," or records check inspections, this reporting is expected to continue. Each program, as it draws up its guidance, should be as clear and specific as possible in defining the different categories of inspection activity to be reported.

d. Formal administrative enforcement actions will be reported as the critical indicator of the level of administrative enforcement activity being carried on by environmental enforcement agencies. It is not our intention to provide a comprehensive reporting of all actions, both informal and formal, being taken to secure compliance. At the same time, it is recognized that there are many different informal techniques used which succeed in getting sources to return to compliance. What is sought here is a telling indicator which will keep reporting as clear cut and unburdensome as possible.

In preparing its guidance each program should list the specific actions to be included under this reporting area. Each program should be guided by the characteristics of a formal administrative action set forth in Section B on "Timely and Appropriate Enforcement Action." For programs without formal administrative authority, such as Drinking Water, other surrogate measures should be defined.

e. Judicial Actions is an area where there has been a long standing practice of federal reporting with no corresponding State data. Commensurate with current reporting practices within EPA, the number of State civil referrals and filed cases will now be reported. We will also now include criminal judicial actions. These should be reported as a separate class and be counted only after they are filed in court in recognition of their sensitive nature.

3. Recordkeeping for Performance Measurement

There are two performance areas for which States and Regions will be asked to retain accessible records and summary data: (1) timeliness and appropriateness of response to violations; and (2) penalties. These categories of information will be considered for future development as measures for possible inclusion in the Agency's management and reporting systems.

a. Timeliness and appropriateness of state and federal response to violations is the principal subject of new guidance being developed by each program. Each program will report to the Steering Committee on how it will evaluate performance in this area during this developmental year including a listing of the information and its source(s) it will rely on to assess timeliness and appropriateness of actions on an ongoing basis. At the end of a year's experience with implementing these oversight agreements, and in preparing for the FY 1986 operating year, each program will conduct a review to determine whether there are measures which might be useful for management purposes. At that time, each program should consider developing a measure for routine reporting, if appropriate.

b. Penalty programs are essential to the effective working of an environmental enforcement program. Records need to be kept of the number and amount of penalties issued by state and federal program offices regularly assessing penalties both those assessed and collected. These records and summary data should be available for review at the time of annual program audits and, in the event of information requests by external groups, on the extent of penalties assessed at any point in time. Each program office in preparing its guidance should specifically address the need for recordkeeping on penalties.

4. Reporting Considerations

There are two areas for special consideration by the programs as they put together their guidance on reporting requirements:

a. Quality Assurance and quality control of reported data is essential as these are the critical indicators of program performance which will be used in making program management decisions of priority, resource levels, and direction. This information must be as reliable as possible. Quality assurance and quality control of data encompases three types of activities including: (1) setting up initial reporting procedures; (2) building in information review and confirmation loops; and (3) conducting routine audits and reviews of reports and reporting systems. Each program in preparing its guidance should describe the safeguards it uses in its reporting, review and confirmation procedures, and describe the audit protocols it will use to ensure the reliability of enforcement and compliance data.

b. The frequency of reporting in order to be most useful for management purposes, at a minimum, should be done on a quarterly basis -- for some programs monthly reporting may be necessary on an interim basis due either to their newness or their importance. This reporting frequency is designed for oversight purposes. It is not designed to provide for "real time" information, that is, instant access to information on the status of a case. However, it is anticipated that formal reporting will be supplemented with more frequent informal communications between the Regions and States on the progress of key cases of concern.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 123

[OW-FRL-2567-3]

National Pollutant Discharge Elimination System; Noncompliance and Program Reporting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This rule proposes to revise program reporting requirements for the National Pollutant Discharge Elimination System (NPDES) under section 402 of the Clean Water Act (CWA). The program requirements are for quarterly noncompliance reports (QNCR) on major dischargers which are prepared by EPA Regions and NPDES States. The primary reason for proposing this change in the QNCR is to establish a consistent basis for reporting noncompliance. The changes should produce a more accurate and meaningful assessment of permit noncompliance by major dischargers within each State.

DATES: Comments on the proposed regulations must be received September 6, 1984.

EPA anticipates that the 45-day public notice and comment period will provide ample opportunity for public input.

ADDRESSEE: Interested persons should submit written comments on this proposal to: Edward S. Bender, Compliance Branch, Enforcement Division (EN-338), Office of Water Enforcement and Permits, EPA, 401 M Street SW., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: Edward S. Bender, Compliance Branch, Enforcement Division (EN-338), Office of Water Enforcement and Permits, Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460, 202-475-8331.

SUPPLEMENTARY INFORMATION

I. Background

On June 7, 1979, EPA promulgated final regulations for the National Pollutant Discharge Elimination System (NPDES) permit program (44 FR 32854 40 CFR Parts 122-124) of the CWA. Section 122.23 of that regulation contained requirements for Quarterly Noncompliance Reports (QNCR) to be prepared and submitted by States approved to administer the NPDES program and by EPA regions for States not yet approved. These regulations were a revision to previous QNCR requirements. Section 122.23 was retained in substantially the same form in the Consolidated Permit Regulations promulgated May 19, 1980 (45 FR 33290; § 122.18), and the deconsolidated NPDES regulations promulgated April 1, 1983 (48 FR 14146; § 123.45).

Under the current regulations, the Director must submit quarterly reports of noncompliance with permit conditions by major dischargers. The narrative report called the Quarterly Noncompliance Report includes the following: Failure to complete construction elements of a compliance schedule, modifications to compliance schedules, failure to provide reports, submission of deficient reports, and noncompliance with other permit requirements, such as effluent limitations and pretreatment requirements. Generally, only noncompliance which is not corrected within a specified period (30 to 90 days) must be reported. Other instances of noncompliance are summarized for major dischargers in a quarterly statistical summary.

The QNCR is used by EPA Regions and the States to track the progress and evaluate the effectiveness of NPDES compliance and enforcement activities. The QNCR is also used to compile routine statistics. The QNCR is used solely for reporting purposes and in no way affects either what constitutes a violation of permit conditions or whether EPA or the States will take an enforcement action.

Experience with the existing regulations has shown that States and Regions have interpreted the existing requirements for reporting instances of noncompliance (§ 123.45(a)(2)) in different ways. This has caused inconsistent noncompliance reporting. In recognition of this inconsistency, EPA Headquarters charged the compliance managers from the EPA Regions to develop a consensus set of criteria for permit violations which were of primary concern. The resulting criteria were then reviewed and discussed by the compliance managers in States having NPDES authority and with the Compliance Task Force of the Association of State and Interstate Water Pollution Control Administrators. These criteria for instances of noncompliance which must be reported in the QNCR are contained in Appendix A. As a result of this agreement and discussion, EPA believes that the proposed rule will result in more consistent reporting.

The existing rule also contains a requirement for a Quarterly Statistical Summary of all other instances of noncompliance by major permittees not reported in the QNCR (§ 123.45(a)(2)(vi)). Most Regions and States believe that the existing requirement is too broad to be useful. The proposed rule would modify this requirement to be an aggregate report of all instances of noteworthy noncompliance. EPA will study various options for defining noteworthy noncompliance during the comment period.

II. Proposed Rule

The Agency is proposing to modify requirements in § 123.45(a) of the NPDES regulations for quarterly program reporting by States and EPA Regions of instances of noncompliance with permit conditions by major dischargers. The modifications include: (1) Deletion of language which is no longer needed because of the deconsolidation of the NPDES regulations (April 1, 1983) and (2) modifications to the requirements for reporting instances of noncompliance.

A. Administrative Changes

As explained earlier, on April 1, 1983 EPA deconsolidated the consolidated permit regulations (CPR). In the CPR, EPA had intended to encourage consolidated permitting by, among other means, adopting procedures for consolidated processing and reporting of multiple permits for a single facility. As EPA acknowledged in the preamble to the deconsolidated rule, the intended benefits of consolidated permitting were not as extensive as had been expected. In the case of consolidated processing and reporting of multiple permits, EPA recognized that this had been very rare, often because the inherently different activities of the regulated facilities, results in different permit requirements and reporting burdens. The April 1, 1983 rule only modified the regulations to physically deconsolidate them and made no substantive changes. One express purpose of the deconsolidation was to facilitate later substantive revisions to the regulation consistent with the Agency's analysis of problems associated with consolidated permitting and permit regulations. In today's rule EPA is proposing two minor substantive changes to eliminate consolidated reporting, consistent with the goals of deconsolidation.

Section 123.45(a)(1)(ii) states, "For facilities or activities with permits under more than one program, provide an additional listing combining information on noncompliance for each such facility." EPA proposes to delete this sentence.

Section 123.45(a)(1)(iv)(B) states, "When a permittee has noncompliance of more than one kind *under a single program*, combine the information

APPENDIX

A SUMMARY INDEX OF NATIONAL PROGRAM GUIDANCE APPLICABLE TO STATE/FEDERAL ENFORCEMENT "AGREEMENTS"

A. State/Federal Enforcement "Agreements": Form, Scope and Substance

Introduction: Regions and States are not expected to duplicate national program guidance. Written "agreements" resulting from discussions between Regions and States should cover topics not clearly specified elsewhere. If not otherwise specified, the Agency-wide Policy Framework will apply. This Framework should be used for establishing the tenor in working with the States and for filling in identified gaps in the national program guidance. The form of the agreement is up to the Regions unless specified by national program guidance. The Regions should decide if there will be a Region-wide "agreement" or whether each Division will separately develop the "Agreements", and what form they will take.

	WATER - NPDES	DW-PWS	AIR	RCRA	FIFRA
Primary Documents:	New Guidance	New Guidance	New Guidance	RCRA Implementation Plan	Grant Guidance
FORM:	Regions have total flexibility to determine the form of the "Agreements", except the items identified below are required to be included in the grant negotiations:				
1. Oversight Criteria and Measures				X	X
2. Oversight Procedures and Protocols					X
3. Criteria for Direct EPA Enforcement					X
4. Procedures for Advance Notification and Consultation					X
5. Reporting Requirements		X		X	X

Introduction: Regions should make sure that States have copies of program oversight criteria and measures and that the States and Regions agree upon the "timely and appropriate" definitions and expectations. In particular, States should be made familiar with the new milestones for timely enforcement action and the situations where penalties are important. Regions should address specific areas of concern that are unique to the States, including areas targeted for improvement.

	WATER-NPDES	DW-PWS	AIR	RCRA	FIFRA
Primary Documents:	1. New Guidance	1. Grant Guidance 2. Regs 3. Reporting Systems 4. New Guidance	1. National Air Audit System 2. New Guidance	1. National Criteria for Program Quality 2. RCRA Implementation Plan 3. RCRA Enforcement Response Guidance	1. Grant Guidance 2. Primacy Regs
General Oversight Criteria:					
1. Clear identification of the regulated community	1	1 & 4	1	1	N/A
2. Clear and enforceable requirements	1	2 & 4	1	1	N/A
3. Accurate and reliable compliance monitoring	1	2 & 4	1	1	1
4. High & improving rates of continuing compliance	1	3 & 4	1	1&2	1
5. Timely and appropriate enforcement response	1	4	2	1,2&3	2
6. Accurate recordkeeping and reporting	1	1 & 4	1	2	1
7. Overall Program Management	1	1 & 4	1	1	1

E. Advance Notification and Consultation

Introduction: Regions should develop agreements with the States based on a policy of "no surprises". In general, Regions should use the Agency-wide Policy Framework for developing this portion of the agreement, supplemented by program-specific guidance where provided (see below).

	WATER-NPDES	DW-PWS	AIR	RCRA	FIFRA
Primary Documents:					
1. Advance Notification	New Guidance*	*	National Air Audit System*	*	N/A
2. Consultative Process: Inspections Enforcement Actions	New Guidance*	*	New Guidance*	*	*
3. Dispute Resolution	*	*	*	*	N/A
4. Press Releases	*	*	*	*	N/A
5. Publicly Reported Performance Data	New Guidance*	*	CDS Guidance Memo*	*	Grant Guidance

*Agency-wide Policy Framework also applies

Introduction: Regions have maximum flexibility to fashion arrangements with the States that are most conducive to a constructive relationship. Regions should follow program specific guidance, where available, using the Agency-Wide Policy Framework to fill gaps where appropriate.

Primary Documents:	WATER-NPDES	DW-PWS	AIR	RCRA	FIFRA
1. Approach & Process	New Guidance	New Guidance*	Air Audit System*	RCRA Implementation Plan	Grant Guidance
2. Consequences of Oversight	New Guidance	New Guidance*	*	National* Criteria for Quality Program and Enforcement Response Policy	Grant Guidance

*Agency-wide Policy Framework also applies

D. Criteria for Direct Federal Enforcement in Delegated States

Introduction: In negotiations with the States, the Regions must clearly define circumstances under which EPA may take direct enforcement action. In general, the Agency-wide Policy Framework should be used to identify the factors to be considered. The program guidance should be followed for determining when to take direct Federal enforcement action based on lack of "timely and appropriate" action, including what classes of violations merit penalties. The Regions should discuss with the States how to take these actions in ways that are supportive of a State action using the Agency-wide Policy Framework as a guide.

Primary Documents:	WATER	DW-PWS	AIR	RCRA	FIFRA
1. Factors for Consideration of Direct Action (excluding "timely and appropriate" and penalties)	New Guidance*	New Guidance*	*	RCRA Enforcement Response Guidance*	Primacy Regs*†
2. Timely and Appropriate Factor	New Guidance	New Guidance	New Guidance	RCRA Enforcement Response Guidance and National Criteria for a Quality Program	Primacy Regs
3. Penalties Factors on where appropriate	To be developed during FY 85	To be developed during FY 85	New Guidance	RCRA Enforcement Response Guidance and RCRA Penalty Policy	Primacy Regs

* Agency-wide Policy Framework also Applies

F. State Reporting

Introduction: Regions should work with the States to ensure timely reporting of State data, and resolve definitional and quality control problems. Regions should reach agreement with State as to how certain State enforcement actions will be reported, following program guidance.

	WATER-NPDES	DW-PWS	AIR	RCRA	FIFRA
5 Reporting Items: 1. Report on Compliance Levels	Guidance for all State Reporting Requirements Found in "SPMS - FY 1985 Goals, Objectives, Commitments and Measures ↓	See DW Annual Reporting Requirements memo for all items ↓	Guidance for all State Reporting Requirements Found in "SPMS - FY 1985 Goals, Objectives, Commitments and Measures" ↓	See RCRA Implementation Plan for all Reporting Items ↓	N/A
2. Targets for SNC lists -reports & commitments					SPMS Guidance
3. Report on number of "formal enforcement actions"					Grant Guidance
4. Inspections - reports & commitments					Grant Guidance
5. Report on number of referrals & cases filed					Grant Guidance
2 Recordkeeping Items: 1. Evaluate timely and Appropriate action	QNCR System		To be added to the National Air Audit System	Monthly Compliance and Enforcement Log	Grant Guidance
2. Records on penalties	*		*	* *	Grant Guidance
Definitions: 1. Formal administrative enforcement actions	New Guidance*		*	RCRA Compliance & Enforcement Strategies Memo	Determined by State Law
2. Inspections	None		National Air Audit System	RCRA Implementation Plan	Grant Guidance
3. Significant Noncompliers (SNC)	Proposed Regulation		SPMS Guidance	RCRA Implementation Plan	SPMS Guidance

* Agency-Wide Policy Framework also applies

Identification of Documents Cited in Appendix

Crosscutting: "SPMS FY 1985 Goals, Objectives, and Measures" to be issued by June 30, by OMSE.

Water - NPDES	Drinking Water	Air	RCRA	FIFRA
o New Guidance - "Guidance for Regional Oversight of NPDES State Programs." Memo from Jack Ravan to be issued by June 30, 1984. o QNCR System - Quarterly Non-compliance Report, which each State/Region submits regarding permit non-compliance with permit conditions by major dischargers o Proposed Regulation-Definition of instances of non-compliance reported in QNCR contained in proposed regulation cleared by OMB 6/22/84, will be transmitted to Regions with New Guidance.	o New Guidance - "National Guidance for Oversight of State Enforcement of the Public Water System Supervision Program" Memo from Vic Kimm to be issued by June 30, 1984. o Grant Guidance - "Final Guidance on PWS Grant Program Implementation" Memo from Vic Kimm on March 20, 1984. o Regs - NIPDWR, 40 CFR Part 141 and 142. o Reporting Systems - SPMS and FRDS o DW annual Reporting Requirements - "FY 1985 Reporting Requirement" memo from Vic Kimm to be issued in final by June 30, 1984.	o New Guidance - "Guidance on Timely and Appropriate" EPA/State Enforcement Response for Significant Violators" Memo from Joe Cannon to be issued June 30, 1984. o National Air Audit - "National Air Audit System Guidelines for FY 84", November 1983. o CDS Guidance Memo - Memo from John Rasnic to Air Branch Chiefs dated April 10, 1984 with April 25, 1984 supplement.	o "National Criteria for a Quality Program" - dated May 15, 1984. o "RCRA Penalty Policy" - dated May 8, 1984. o "RCRA Implementation Plan," to be issued by June 30, 1984. o "RCRA Enforcement Response Guidance" to be issued by June 30, 1984. o RCRA Compliance and Enforcement Strategies Memo - "Compliance Enforcement Program Descriptions in Final Authorization Application and State Enforcement Strategies," memo from Lee Thomas to RA's dated June 12, 1984. o Compliance Monitoring and Enforcement Log - the form for recording the monthly compliance data from the States and Regions.	o Grant Guidance "Final FY 85 Enforcement and Ceritification Grant Guidance," Memo from Gus Conroy, date March 14, 1984 o Primacy Regs - "FIFRA, State Primary Enforcement Responsibilities," 40 CFR Part 173, January 5, 1983.

. . . ." EPA proposes to delete the underlined phrase "under a single program."

B. Instances of Noncompliance To Be Reported

The existing requirements for quarterly reporting of noncompliance are subject to varying interpretation, and, therefore, are ineffective in achieving their intended purpose. EPA proposes to modify the regulations to incorporate specific criteria that establish a consistent basis for evaluating noncompliance in quarterly reports. The proposed version would also eliminate unnecessary and inappropriate reporting requirements.

The proposed rule and the criteria in Appendix A will allow the Director (an approved NPDES State Agency Head or EPA Regional Administrator or unapproved States) to prepare the QNCR automatically, using Discharge Monitoring Report (DMR) data, permit conditions, enforcement actions, and other data which are entered into the Permit Compliance System (PCS, the automated NPDES data base). The PCS-generated QNCR will save resources and provide an incentive for maintaining and updating PCS. This method of preparing and reviewing the QNCRs improves the reliability of the data in PCS and provides a common source for compliance data.

The proposal would divide instances of noncompliance by major permittees into two categories. Category I noncompliance must be reported in the QNCR. The States would have the flexibility to add other instances of noncompliance to the QNCR.

1. Category I Noncompliance

Category I noncompliance includes the following:

a. *Violations of Requirements from Previous Enforcement Orders.* When an NPDES enforcement action against a facility in noncompliance consists of a judicial decree, administrative order, or other equivalent legal action, that facility's compliance with the decree, order, or other action should be closely monitored. Violations of these provisions could constitute contempt of court or require additional legal action to obtain an injunction, penalties or other remedies. Therefore, the proposal would require States and Regions to include in the QNCR failure to meet the requirements imposed through such enforcement actions except for compliance schedules. In many cases, an administrative order will contain a reasonable schedule requiring full compliance with permit terms and conditions at the end of a specific time period. Violations of compliance schedules contained in section 309(a)(5)(A) enforcement orders must be reported based on the criteria for compliance schedule violations discussed below, because they are used in lieu of permit compliance schedules.

In order to assure that enforcement orders are closely monitored, EPA proposes that a permittee must be shown on the QNCR until the order has been met in full. If the permittee is in compliance with the order, the compliance status shall be considered Resolved Pending (abbreviated as "RP" in the QNCR), which means the permittee is in compliance with the schedule in the order using the criteria in Appendix A, but has not come into full compliance with final permit conditions.

Each order to which the permittee is subject should be listed separately with an appropriate docket number and the date that the order became effective. EPA believes that this procedure will provide additional incentive to the permittee to meet the orders and give notice to the public of additional monitoring, construction, and reporting requirements placed on the permittee. This requirement should not cause a significant change in reporting burden. EPA invites comment or questions on this proposal.

b. *Compliance Schedule Violations.* Schedules containing major milestones (e.g., construction of treatment facilities or development of approvable pretreatment programs) are included in many permits and administrative orders as a means of tracking a permittee's progress toward compliance with final effluent limitations and other requirements. The existing regulation requires reporting of compliance schedule violations if they are not corrected within 30 days. The proposal would distinguish between two classes of compliance schedule violations and would use different criteria for each to determine whether a facility's noncompliance with a schedule must be reported.

The first class consists of major publicly owned treatment works (POTW) that have obtained Federal construction grants to fund design and construction of treatment facilities. It may be possible for a permittee to meet the conditions of its federal construction grant, and not be in full compliance with additional requirements. For these facilities, whether or not a compliance schedule violation relating to construction must be reported will depend on a review of their progress in the construction grant process (including planning, design, and construction). In some cases this will require coordination between the State and EPA. If that examination shows that progress is not acceptable, the POTW noncompliance would be reported to how long the permittee was in noncompliance. Acceptable progress means that the permittee has met applicable grant requirements and is not responsible for delays in the grant process which result in violations of any applicable compliance or permit schedule. EPA invites comments on whether other criteria for evaluating compliance schedule violations for Federally-funded POTWs are more appropriate.

All other permittees subject to QNCR reporting (major municipals, major non-municipals, and major Federal facilities) are included in the second class. For these facilities, only those violations of compliance schedules which are not resolved (returned to compliance with applicable schedule requirements) within 90 days would be included on the QNCR. The change from the current 30 day criterion to 90 days is proposed because delays of less than 90 days for interim requirements can frequently be recovered in other parts of the compliance schedule. In addition, 30 days is insufficient for adequate review and verification of the violation.

c. *Violations of Permit Effluent Limits.* Under the existing regulations, any violation of permit effluent limitations must be reported on the QNCR if the permittee has not returned to compliance within 45 days from the date reporting of compliance was due under the permit, or if the violation would constitute a pattern of noncompliance. Based upon experience, EPA has concluded that focusing on patterns of noncompliance at individual facilities provides a better measure of permittee performance than data on violations exceeding 45 days. However, the existing regulation does not precisely define "pattern of noncompliance." We are proposing new criteria for reporting effluent limitation violations that concentrate on these patterns and clearly delineate the instances of noncompliance to be reported. Single event violations will only be reported if they have the potential to cause or actually cause adverse environmental effects or pose a human health hazard. Examples are discussed in Appendix A.

In general, inclusion in the QNCR of permittee noncompliance with permit effluent limitations depends on the magnitude and/or duration of the violation. Under the proposal, effluent limitation violations will be reported on a pollutant-by-pollutant and outfall-by-outfall basis in accordance with EPA criteria shown in Appendix A.

d. *Violations of Permit Reporting Requirements.* Permittees are required to submit regular reports of self-monitoring data which EPA and the States use to assess compliance with permit limitations. Timely submission of accurate reports is essential to compliance efforts. Therefore, the proposal would continue to require the Director to report permittee failure to submit self-monitoring or compliance schedule reports. These violations would have to be reported if the permittee does not provide a complete report within 60 days of the due date, instead of the 30 days in the existing regulation. EPA experience has shown that reports which are delinquent by 30 days are often received within 60 days of the due date. As a result, regulatory agencies generally take action only after reports are delinquent by 60 days. The proposal would change the regulation to reflect this practice.

As in the existing regulation, the proposed regulation requires the Director to include in the QNCR the names of permittees that provide reports that are so deficient as to be useless or cause misunderstanding.

2. Other Noncompliance

EPA believes that an approved State should be able to add other instance(s) or noncompliance at its discretion that do not conform to the criteria in the regulation and Appendix A. If a State adds such instance(s) to its QNCR, the word "discretionary" should be noted in the remarks column.

3. Proposals for Additional Reporting

A. EPA is also considering adding a second tier of mandatory narrative reporting for effluent violations. This proposed tier would include permittees who violated the same monthly average permit limit by any amount, twice in a six month period. This report would be a supplement to the QNCR and provide additional instances of violations which may be of cocern for reporting purposes. It is roughly estimated that such a report would increase the number of permittees reported by name by 20 percent or more. EPA invites comments on the concept of a second tier of narrative reporting, the resource burden and the criterion for the second tier report.

B. The existing regulation includes a Quarterly Statistical Summary which is intended to reflect other instances of noncompliance by major permittees which are not reported on the QNCR. EPA believes that this list is too broad to be useful. Therefore, we are proposing to change this requirement to be a summary of the total number of major permittees with instances of "noteworthy" noncompliance. EPA is currently considering several alternative criteria to identify "noteworthy" violations for purposes of compiling the statistical summary. All Category I noncompliance would be included in the summary plus noncompliance meeting one of the following alternative criteria for exceeding monthly average effluent limitations. The alternative criteria are as follows:

(1) Any violation of a monthly average effluent limit during the reporting quarter;

(2) Any violation of a monthly average effluent limit which exceeds the technical review criteria (see Appendix A) during the reporting quarter; and

(3) Two violations of the same monthly average effluent limit in a six month period (i.e., the reporting quarter and the previous quarter).

(4) Two violations of the same monthly average effluent limit in a twelve month period (i.e., the reporting quarter and the three previous quarters).

EPA will evaluate each of these criteria in relation to permittee Discharge Monitoring Reports from several States. This information and public comments on the alternatives will be considerd in choosing the appropriate criterion to define noteworthy noncompliance.

III. Purpose of Noncompliance Reporting

The Agency would like to make clear that the QNCR is intended to be used solely to track and evaluate the effectiveness of compliance and enforcement activities. The proposal effects only reporting requirements. The proposal has no impact upon what is considered a violation, or on whether or what kind of enforcement action will be taken in a given case. There is no change to the authority of EPA, the State, or any citizen to initiate an enforcement action against any permittee in violation of any permit condition.

The proposed approach to reporting noncompliance is not related to permit enforcement or the permittee's obligation to comply or to report instances of violation to the State or EPA.

IV. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a regulation is major and therefore subject to the requirement of a Regulatory Impact Analysis. It does not satisfy any of the criteria specified in section (b) of the Executive Order and, as such, does not constitute a major rulemaking. This regulation was submitted to the Office of Management and Budget for review.

V. Paperwork Reduction Act

The information collection requirements in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* Comments on these requirements should be submitted to Mr. Richard Odas, Office of Management and Budget, Office of Information and Regulatory Affairs New Executive Office Building (Room 3228), 26 Jackson Place, NW., Washington, D.C. 20503. The final rule will respond to any OMB or public comments on the information collection requirements.

VI. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 601 seq., EPA is required to prepare a Regulatory Flexibility Analysis to assess analysis is required, however, where the head of the Agency cetifies that the rule will not have a significant economic impact on a substantial number of small entities. Today's proposed amendment to the regulations will have no effect upon small entities. Accordingly, I hereby certify, pursuant to 5 U.S.C. 605(b) that these proposed amendments, if issued in final form, will not have a significant impact on a substantial number of small entities.

List of Subjects in 40 CFR Part 123

Hazardous materials, Indians—land, Reporting and record keeping requirements, Waste treatment and disposal, Water pollution control, Water supply, Intergovernmental relations, Penalties, Confidential business information.

Authority: Clean Water Act, 33 U.S.C. 1251 et seq.

Dated: July 13, 1984.

Alvin L. Alm,
Acting Administrator.

PART 123—STATE PROGRAM REQUIREMENTS

Section 123.45 is proposed to be amended by revising the introductory text, and paragraph (a) to read as follows:

§ 123.45 Noncompliance and Program Reporting by the Director.

The Director shall prepare quarterly and annual reports as detailed below. When the State is the permit-issuing authority, the State Director shall submit any reports required under this section to the Regional Administrator and the EPA Region in turn shall submit the State report to EPA Headquarters. When EPA is the permit-issuing authority, the Regional Administrator shall submit any report required under this section to EPA Headquarters.

(a) *Quarterly reports.* The Director shall submit quarterly narrative reports for major permittees as follows:

(1) *Format.* The report shall use the following format:

(i) Provide a separate list of NPDES permittees which shall be subcategorized as non-POTWs, POTWs, and Federal permittees;

(ii) Alphabetize each list by permittee name. When two or more permittees have the same name, the lowest permit number shall be entered first.

(iii) For each entry on the list, include the following information in the following order:

(A) Name, location, and permit number of the noncomplying permittee.

(B) A brief description and date of each instance of noncompliance for the permittee. Instances of noncompliance may include one or more of the kinds set forth in paragraph (a)(2) of this section. When a permittee has noncompliance of more than one kind, combine the information into a single entry for each such permittee.

(C) The date(s) and a brief description of the action(s) taken by the Director to ensure compliance.

(D) Status of the instance(s) of noncompliance with the date of the review of the status or the date of resolution.

(E) Any details which tend to explain or mitigate the instance(s) of noncompliance.

(2) *Instances of noncompliance by major dischargers to be reported.* (i) Instances of Category I noncompliance (described in Appendix A) by major dischargers shall be reported in successive reports until the noncompliance is reported as resolved (i.e., the permittee is no longer violating the permit conditions reported as noncompliance on the QNCR). Once noncompliance is reported as resolved in the QNCR, it need not appear in subsequent reports.

(A) All permittees which violate Category I criteria must be listed on the QNCR for the reporting period the violation occurred, even if the violation is resolved during the reporting period.

(B) All permittees with valid enforcement orders (i.e., administrative and judicial orders and consent decrees) for previous instances of noncompliance must be listed on the QNCR until the orders have been satisfied in full and the permittee is in compliance with permit conditions. If the permittee is in compliance with the enforcement order (as defined in Appendix A), the compliance status shall be reported as resolved pending, but the permittee will continue to be listed on the QNCR.

(ii) *Category I noncompliance.* The following instances of noncompliance by major dischargers are Category I noncompliers:

(A) Violations of previous administrative or judicial enforcement orders, except for schedule violations which shall be reported in accordance with paragraph (a)(2)(ii)(B) of this section;

(B) Violations of compliance schedules, including portions of CWA section 309(a)(5)(A) orders which pertain to compliance schedules, where:

(*1*) A POTW funded under Title II of CWA is not making acceptable progress towards compliance (as defined in Appendix A), and

(*2*) Any other permittee has violated its schedule and not returned to compliance with the schedule within 90 days from the date of the violation;

(C) Violations of certain permit effluent limits in accordance with Appendix A "Criteria for Noncompliance Reporting in the NPDES Program".

(D) Failure to complete or provide compliance schedule or monitoring reports. When the permittee has failed to complete or provide a report required in a permit (e.g., a compliance schedule progress report, pretreatment report, or a monitoring report) and the permittee has not submitted the complete report within 60 days from the due date specified in the permit.

(E) When the required reports provided by the permittee are so deficient as to cause misunderstanding by the Director and thus impede the review of the status of compliance.

(iii) *All other.* Summary information shall be reported quarterly on the number of major permittees with instances of noteworthy noncompliance with their permit requirements, including those otherwise reported under this paragraph (a).

* * * * *

Appendix A—Criteria for Noncompliance Reporting in the NPDES Program

This appendix describes the criteria for reporting violations of NPDES permit conditions in the quarterly noncompliance report (QNCR) as specified under § 123.45(a)(2). The revised QNCR reporting requirements will be used as part of the administrative procedure for screening NPDES self-monitoring data and other data to report instances of noncompliance which are of major concern to the EPA and State regulatory agency.

It is important to note that any violation of an NPDES permit is a violation of the Clean Water Act (CWA) for which the permittee is strictly liable. The requirement that certain instances of noncompliance be reported in the QNCR is for State and EPA reporting purposes only. An agency's decision as to what enforcement action, if any, should be taken in such cases, must be based on an analysis of all facts and relevant legal provisions involved in any particular case.

The categories of noncompliance to be reported are: violations of requirements resulting from previous enforcement orders, violations of compliance schedules, violations of permit effluent limits, and violations of permit reporting requirements.

I. Violations of Previous Enforcement Orders

Violation of a requirement imposed in an enforcement action such as judicial decree or administrative order, except as noted under II, must be reported on the QNCR.

II. Violations of Compliance Schedules

Schedule violations, including portions of 309(a)(5)(A) orders which pertain to compliance schedules (including pretreatment), should be reported on the QNCR for both POTWs and non-POTWs. Assessing the status of compliance on non-POTWs is a relatively straightforward matter because there are few variables involved in their construction program than for POTWs. For those POTWs which rely upon the Federal construction grants process to assist in funding, the entire grant process (including planning, design, and construction) must be reviewed to determine if the POTW is making acceptable or unacceptable progress. If a POTW is making unacceptable progress, its noncompliance must be reported. Acceptable progress means that the grantee has met applicable grant requirements and is not responsible for delays in the grant process which result in violations of any applicable compliance of permit schedule. For POTWs not in the Federal grants process and non-POTWs, schedule violations which have not been resolved (returned to compliance with schedule requirements) within 90 days must be reported on the QNCR.

III. Violations of Permit Effluent Limits

Cases in which violation of permit effluent limits must be reported depend upon the magnitude and/or duration of the violation. Effluent violation should be evaluated on a parameter-by-parameter and outfall-by-outfall basis. Three subcategories have been created for effluent violation, as follows:

a. Effluent Criteria for Single Events and Short-Term Limits

Single event violations (i.e., of daily maximum limits) and short term violations (i.e., of seven-day averages) are discretionary with respect to their inclusion on the QNCR. However, any permit violation shall be reported which has the potential to cause or has actually caused adverse environmental effects, (e.g., fish kills, oil sheens) or poses a human health hazard (e.g., spills of carcinogenic, radioactive, or mutagenic substances). This also includes any unauthorized discharge or bypass which causes an adverse water quality impact or indirect discharge which interferes with a POTW's treatment system. The Director also may consider whether to include on the QNCR violations detected during compliance inspections by using a single event criterion.

b. Effluent Criteria for the Magnitude and Duration of Monthly Average Permit Limits

A determination of whether violations of monthly average limitations must be reported is based on exceeding the product of the Technical Review Criteria (TRC) (magnitude) times the effluent limit for a specified time period (duration). TRC's are for two groups:

Group I—Inorganic and Oxygen Demanding Pollutants (such as BOD, COD, TSS nutrients): TRC = 1.4
Group II—Toxic Pollutants (such as heavy metals, cyanide, and organics): TRC = 1.2

The duration is evaluated for consecutive six month periods. For all permittees, exceedance of the TRC for the monthly average for any two months in a six-month period must be reported.

c. Effluent Criteria for Chronic Violations

In some cases, a permittee will constantly violate the monthly average permit limit but not exceed the TRC. These chronic violations would be reported on the QNCR if the monthly average permit limits were exceeded in any four months in a six-month period.

IV. Violations of Permit Reporting Requirements

The Director must report on the QNCR any permittee failure to submit monitoring or compliance schedule reports if the permittee does not provide the report within 60 days of the due date. The Director must also include permittees that provide reports that are so deficient to be useless or cause misunderstanding.

Group I—Inorganic and Oxygen Demanding Pollutants TRC = 1.4

Oxygen Demand

Biochemical Oxygen Demand
Chemical Oxygen Demand
Total Oxygen Demands
Other

Solids

Total Suspended Solids (Residues)
Total Dissolved Solids (Residues)
Other

Nutrients

Phosphorus Compounds
Nitrogen Compounds
Other

Detergents and Oils

MBAS
NTA
Oil and Grease
Other detergents or algicides

Minerals

Calcium
Chloride
Fluoride
Magnesium
Sodium
Potassium
Sulfur
Sulfate
Total Alkalinity
Total Haradness
Other Minerals

Metals

Aluminum
Cobalt
Iron
Vanadium

Group II—Toxic Pollutants TRC = 1.2

Heavy Metals (All Forms)

Antimony
Arsenic
Beryllium
Cadmium
Chromium
Copper
Lead
Nickel
Mercury
Selenium
Silver
Thallium
Zinc

Inorganic

Cyanide
Total Residual Chlorine.

All organics except those specifically listed in Group I. The criteria for fecal coliform violations are discretionary.

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NATIONAL GUIDANCE
FOR
OVERSIGHT OF NPDES PROGRAMS
FY 1985

BACKGROUND

The Clean Water Act (CWA) authorizes EPA and approved States to administer the National Pollutant Discharge Elimination System (NPDES) Program, which is the basic regulatory mechanism for ensuring that dischargers meet the requirements of the CWA. There are currently 36 approved State NPDES programs, 19 of which also are approved to administer the pretreatment program. EPA retains the lead responsibility in the balance of the States, but shares many of the implementation functions of the NPDES program (including pretreatment) in a partnership arrangement with State agencies.

EPA has continuing overall responsibility for implementation or oversight of the NPDES program in all States--approved or not approved--in order to promote the achievement of national program goals and objectives, to ensure adherence to Federal and State statutory and regulatory requirements implementing the CWA, and to maintain reasonable national consistency. This guidance provides a set of criteria for evaluating and overseeing NPDES programs (including pretreatment); the criteria also provide a basis for Regions and States to negotiate annual agreements and/or work plans. The document:

- Defines the major elements of a sound NPDES program;

- Outlines high priority achievements for FY 1985;
- Clarifies how the Region and States should translate specific program goals and performance expectations into annual grant agreements and/or work plans; and
- Defines the respective roles and responsibilities of the EPA Regions and States in carrying out the NPDES program, as well as areas where there is a need for further definition of roles in the individual State agreements.

PURPOSE AND SCOPE

This guidance is a media-specific document for use in FY 1985. It must be used in conjunction with the "Policy Framework for State/Federal Enforcement Agreements," which contains the Agency's guidelines for all enforcement programs. The "Policy Framework" covers both the process and the substance of the Regional/State agreements, and, unless otherwise specified in this document, the national policy will apply.

This guidance establishes criteria for the NPDES program (including pretreatment). It is intended to be used as a framework, with the Regions and the States supplying the details for their individual agreements and/or work plans based on current Federal regulations, national policy and guidance documents, and State priorities. In reviewing, and, where necessary, updating oversight agreements, the Regions and States should also use the FY 1985-1986 Agency Operating Guidance, the FY 1985 Strategic Planning and Management System, and the FY 1985 Office of Water Evaluation Guide, which set forth national priorities and performance expectations. To the extent possible, all requirements for plans and strategies cited in this guidance should be consolidated into existing work plans and/or State EPA agreements.

EPA itself can do it

Fully-functioning NPDES programs are required to permit all dischargers, both major and minor, and to conduct appropriate compliance assessment and enforcement activities for all permittees. Because EPA and many approved States have a substantial backlog of expired municipal and industrial permits and because permits need to incorporate new requirements for controlling toxic discharges, this guidance emphasizes issuance and reissuance of major industrial and major municipal permits in FY 1985. The guidance also places priority on rapid response to instances of significant noncompliance,[1] especially by major dischargers. Wherever resources allow, administering agencies[2] should also address minor dischargers of concern and other instances of noncompliance. In the longer-term, the concepts in this guidance should be phased-in for the full range of sources and violations.

If priority is paper-process where is ?

Finally, this guidance addresses some aspects of the pretreatment program; comprehensive guidance that covers oversight of the pretreatment program will be forthcoming.[3] The coverage in the present guidance is limited to pretreatment program approvals (State and local), modification of NPDES permits to incorporate local program requirements, establishment of general oversight of approved programs, and enforcement response to violations by POTWs of pretreatment requirements in NPDES permits that appear on the Quarterly Noncompliance Report (QNCR). It does not cover the compliance and enforcement of pretreatment requirements against industrial users, which will be addressed in separate pretreatment program guidance.

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[1] For purposes of this guidance, any noncompliance required to be reported in the Quarterly Noncompliance Report (QNCR) is considered "significant noncompliance."

[2] The term "administering agency" refers to EPA Regions and approved States that administer the NPDES/pretreatment programs.

[3] The Pretreatment Implementation Review Task Force, which is advising the EPA Administrator on needed improvements in the pretreatment program, has recommended that EPA better define the roles and responsibilities of Federal, State and local governments. Additional guidance on pretreatment program oversight will be prepared in response to that request, particularly in the area of implementing and enforcing requirements for indirect dischargers.

ELEMENTS AND CRITERIA FOR THE NPDES OVERSIGHT PROGRAM

There are three operational elements of the NPDES program that should be addressed in an effective Regional/State agreement and oversight program: permitting, compliance monitoring, and enforcement response. There is also a need to ensure the ongoing integrity of State NPDES programs (including pretreatment), as well as their ability to achieve the goals and objectives of the CWA.

The Agency has developed a general set of oversight criteria for all compliance and enforcement programs.[4] This media-specific document provides guidance on how to use these criteria, as well as additional criteria related to permit issuance and the pretreatment program, to evaluate and oversee the operational elements of the NPDES program and to negotiate individual agreements and/or work plans with each State. Such agreements should take into account the unique circumstances, legal authorities and resources of each State NPDES program.

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[4] See "Policy Framework for State/EPA Enforcement Agreements," June 24, 1984.

I. Permitting

The CWA (§402) calls for EPA or approved States to issue permits for the discharge of any pollutant or combination of pollutants. These permits are enforceable documents that contain specific discharge limitations, as well as conditions on data and information collection, reporting, and other requirements that the administering agency deems appropriate. The overall integrity of the NPDES program is, therefore, inextricably linked to the quality and timeliness of the permits that are issued by EPA and the NPDES States.

Evaluation and oversight of permit programs should be based on the following criteria:

- ° Clear identification of the regulated community as evidenced by the existence and use of:
  - -- Established procedures for maintaining a complete, accurate, and up-to-date automated data system that identifies all sources that are covered by or have applied for NPDES permits: The administering agency should maintain a current inventory of all permit holders and applicants. Wherever possible, States should enter current permit data into the Permit Compliance System (PCS, the automated NPDES data base) in a timely manner consistent with the procedures in the Enforcement Management System (EMS); where a State is not a regular user of PCS and does not have an automated system that is compatible with PCS, it should supply the data to the Region in a form that

facilitates EPA's entry of the data into PCS. The administering agency should also maintain up-to-date files on individual permittees, and should have a process for identifying dischargers that are required to apply for but have not applied for permits and for following through as necessary in such cases.

-- Permit data that are complete, accurate and up-to-date: The Region is responsible for conducting periodic audits to verify that each approved State is maintaining current permit files and data in PCS consistent with its prescribed procedures; the Region should also conduct periodic audits in cases where an unapproved State is writing draft permits in a partnership arrangement with the Region.

° Development and timely issuance of high-quality permits and permit modifications as evidenced by the existence and use of:

-- An up-to-date permit issuance list and strategy by State that guides permit issuance/modification consistent with national priorities and assures that backlogs do not develop: It is the responsibility of the administering agency to develop a strategy and an annual permit issuance list of priority permits. In FY 1985, the priority list should include all major industrial and major municipal permits to be issued. Both the strategy and the list should be designed to eliminate any existing backlog in a reasonable time, and to ensure that new backlogs do not develop. In addition to major permits, the strategy should also address any substantial backlog of minor permits, especially those assigned a high priority due to water quality impacts and State and/or Federal funding (i.e. P.L. 92-500 minor facilities). The list should specify the priority permits to be issued/modified during the fiscal year (by name and type) consistent with national and State permitting priorities and the Annual Agency Operating Guidance. The list may be modified periodically to ensure that it reflects changing conditions throughout the year. At the time the list is developed, the Region and State should agree on procedures for modifying the list, as well as the role of EPA and the State in the permitting process.

-- Permits that contain appropriate, clear and enforceable requirements: The administering agency has the responsibility to ensure that individual permits are consistent with the requirements in the regulations (NPDES, Secondary Treatment, and effluent guideline regulations), as well as current national policy, and that permits contain clear and enforceable provisions. Where the State is the administering agency, the Region should identify the specific State permits it plans to review prior to issuance/

modification in accordance with applicable Federal regulations, and should target those specific types of priority permits that require early coordination prior to draft permit issuance. The State should submit copies of draft and final permits consistent with the NPDES regulations (40 CFR §123), and the Region should conduct periodic audits of permit quality. Where EPA is the permit issuing authority, the Region should coordinate with the State to assure timely review and certification of permits in accordance with the CWA (§401).

° Approval and overview of high-quality local pretreatment programs as evidenced by the existence and use of:

-- A strategy for the timely development and approval of local pretreatment programs, as well as overview of local programs following approval: It is the responsibility of the agency that administers the pretreatment program to establish and implement a written strategy[5] for the development and approval of all required local pretreatment programs, as well as the modification of POTW permits to: 1)incorporate a schedule for local program development where a POTW is newly identified as needing a pretreatment program; and to 2) incorporate approved local programs (and any conditions on approval); this should be done consistent with the program requirements and time frames in the General Pretreatment regulations and national policy/guidance. The strategy should also address: how the administering agency plans to overview approved local programs consistent with national guidance, and how the administering agency plans to proceed with direct implementation in cases where a municipality has failed to complete an approvable program in a timely manner or where the State has decided to use its own authorities rather than to require local programs.

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[5] Recognizing that this strategy is a new requirement, administering agencies are asked to accomplish as much as possible in FY 1985 and to complete the task in FY 1986.

-- Approved local pretreatment programs that are effectively administered on a continuing basis: The authority that administers the pretreatment program is responsible for ensuring that local pretreatment programs are being reviewed, approved, and disapproved consistent with the program requirements and time frames in the regulations and national policy and guidance, and for overseeing the ongoing operation and updating, as necessary, of approved local programs consistent with national guidance through periodic audits of local programs. Where the State administers the NPDES program and EPA administers the pretreatment program, the NPDES State is responsible for the timely issuance of municipal permits that incorporate local pretreatment programs.

II. Compliance Monitoring

The EPA Regions and NPDES States must maintain records and develop procedures for conducting accurate and reliable review and evaluation of permittee self-monitoring reports, as well as inspection of permittees; the administering agency should assume primary responsibility for these activities. These activities are essential to maintaining the overall integrity of the NPDES permit program (including pretreatment), and for identifying instances of noncompliance so that the administering agency can initiate appropriate and timely action as needed. The administering agency should also have an established compliance monitoring program that incorporates the requirements of the NPDES regulations, as well as the appropriate principles and supporting subparts of the most current Enforcement Management System (EMS).

Evaluation and oversight of compliance monitoring programs should be based on the following criteria:

- Timely receipt and review of accurate and complete self-monitoring reports, and maintenance of complete and accurate records as evidenced by the existence and use of:
  - -- Established procedures and time frames for review of DMRs, and maintenance of complete and accurate data: The administering agency should receive and review all Discharge Monitoring Reports (DMRs) and POTW pretreatment program implementation reports for accuracy and completeness, and should assure that permittees are complying with their permit requirements. The administering agency should enter the data for major permittees into PCS within

30 days of receipt of the DMR. Where a State is not a regular user of PCS, it should enter the data into its own automated system and transfer the data into PCS, or it should provide the data to the Region in a form that facilitates EPA's entry into PCS. Response to nonreceipt or unacceptable DMRs should be consistent with the time frames in the regulation and the EMS; failure to submit or unacceptable DMRs within 60 days of the required date are instances of significant noncompliance, especially by major permittees.

-- Data that are accurate, complete and up-to-date: The Region should verify that each NPDES State is exercising its responsibilities properly through routine reviews of a random sample of DMRs and PCS entries during periodic audits of the State program.

- Maintenance of a reporting system that contains accurate, up-to-date, accessible information on current compliance status:

-- Established procedures and time frames for submittal of QNCRs and maintenance of data: The administering agency must prepare and submit its Quarterly Noncompliance Reports (QNCRs) consistent with the requirements and time frames in the NPDES regulation and national guidance. Wherever possible, the administering agency should prepare the QNCR automatically by using DMR data and other data that are entered into

PCS, and should update PCS at regularly scheduled intervals according to established procedures. Where a State is not a regular user of PCS, it should enter the data into its own automated system and transfer the data into PCS, or it should provide the data to the Region in a form that facilitates EPA's entry into PCS.

- QNCRs and data systems that are accurate, complete, and up-to-date: The Region is responsible for verifying the accuracy and completeness of both the QNCRs and the data in PCS. Where a State is not a regular user of the national data system (PCS), the Region should actively encourage full participation at the earliest possible date.

° Timely conduct of appropriate and effective compliance inspections as evidenced by the existence and use of:

- Established procedures within the annual plan for conducting compliance inspections: The administering agency should have established procedures for conducting routine and special inspections as part of its annual Compliance Inspection Plan. The plan and procedures should be consistent with the EPA Compliance Inspection Manual and current national policy, and should contain clear criteria for selecting candidates for the appropriate mix of routine and special compliance inspections. The procedures should also outline the basic requirements and time frames for completing reports on inspection findings and for entering the data into PCS wherever possible. Where the State is not a regular user of PCS, it should enter the data into its own automated system and transfer the data into PCS, or it should provide the data to the Region in a form that facilitates EPA's entry into PCS. The Region and State should agree in advance to establish quarterly a list of facilities that are to be inspected, and to assess the status of the annual plan at established intervals throughout the year. The Region should also agree to provide prior notice to the State before conducting joint or independent inspections, and to supply the State with at least semi-annual reports of its findings (mid-year and end-of-year); the State should be apprised of major problems as soon as they are discovered.

-- Inspections that are conducted in an effective manner: The administering agency is responsible for conducting sampling and analysis in the prescribed manner, completing the required reports on findings within established time frames, and for ensuring the entry of the data into PCS. The Region should participate in an appropriate number of joint inspections with the State in order to evaluate the effectiveness of the State's inspection activities, and should conduct periodic random audits of inspection reports and case files. The administering agency is also responsible for taking proper action in cases where permittees fail to respond to DMR Quality Assurance (QA) requirements, and for initiating appropriate follow-up to DMR QA test results. NPDES States should specifically identify the need for the Region's assistance or support from EPA contractors, as well as the type and level of assistance required.

III. Enforcement Response

The CWA (§309) requires EPA or NPDES States to respond to NPDES permit violations (including POTW pretreatment) by initiating the appropriate enforcement action(s); the administering agency should assume primary responsibility for these activities. Enforcement response involves a series of actions, starting with the initial reaction to the identification of a violation and ending with the discharger's return to full compliance and formal close-out of the case.

The administering agency should have compliance and enforcement procedures that are consistent with the Enforcement Management System (EMS) and its supporting documents: the Technical Review Criteria (TRC) and the Enforcement Response Guide (ERG). These procedures include screening and assessing the significance of the initial violation, translating compliance information into the appropriate enforcement response in a timely manner, and entering instances of noncompliance into the permittee's permanent record.

Evaluation and oversight of enforcement programs should be based on the following criteria:

- Timely evaluation and appropriate initial response to identified violations as evidenced by the existence and use of:
  - Established pre-enforcement procedures that set forth criteria for evaluation and appropriate initial responses to identified violations: The administering agency should have current pre-enforcement procedures that are consistent with the principles in the EMS and its supporting documents. The procedures should include: technical review criteria for screening DMRs to determine the significance of the violation; procedures and time frames for applying appropriate initial response options to identified violations; and procedures and time frames for maintaining a chronological summary of all violations.
  - Enforcement responses that are timely and appropriate: The administering agency should: screen all DMRs from permittees to determine the level and frequency of any violation, and specifically evaluate instances of non-compliance by major permittees and P.L. 92-500 minor permittees[5] within 30 days from the identification of a violation; determine the appropriate response; and document any action

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[5] This refers to minor P.L. 92-500 facilities as defined in existing Region/State agreeements. Other minor permittees should be evaluated as resources permit.

taken/not taken (including the technical reason). The date of identification of the violation is the point at which the organization responsible for compliance enforcement learns of the violation; an appropriate response is one that results in the violator returning to compliance as expeditiously as possible. The Region should verify the timeliness and appropriateness of a State's DMR evaluation and its initial responses through periodic audits.

is what has been the history here?

Has this ever been done?

- Timely and appropriate enforcement response, follow-up and escalation until compliance is obtained as evidenced by the the existence and use of:

-- Established enforcement response procedures that are appropriate and timely: The administering agency should have current enforcement response procedures that are consistent with the ERG section of the EMS, as well as an up-to-date strategy for addressing instances of significant noncompliance consistent with national and State priorities. The procedures should set forth: an analytical process for determining the appropriate level of action for specific categories of violation; procedures for preparing and maintaining accurate and complete documentation that can be used in future formal enforcement actions; and time frames for escalating enforcement responses where the noncompliance has not been resolved.

Has any of this been the case?

-- Enforcement actions (Notices of Violation, Administrative Orders, and judicial actions) that are initiated in a timely fashion and contain clear and enforceable requirements: The administering agency should be able to demonstrate that its enforcement procedures result in: appropriate initial and follow-up enforcement actions that are applied in a uniform, consistent and timely manner; formal enforcement actions (as defined by State agreements) that clearly define what the permittee is expected to do by a reasonable date certain; and compilation of complete and accurate permanent records that can be used in future formal enforcement actions. In the case of major permittees, by the time a permittee appears on the QNCR, the administering agency is expected to have already initiated enforcement actions to achieve compliance. Prior to a permittee appearing on the subsequent QNCR for the same violation, the permittee should either be in compliance or the administering agency should have taken formal enforcement action to achieve final compliance.[6] In the rare circumstances where formal enforcement action is not taken, the administering agency is expected to have a written record that clearly justifies why the alternative action (i.e. informal enforcement action or permit modification) was more appropriate. The Region should verify the timeliness and appropriateness of a State's enforcement actions through periodic audits.

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[6] A formal enforcement action is defined as one that requires actions to achieve compliance, specifies a timetable, contains consequences for noncompliance that are independently enforceable without having to prove the original violation, and subjects the person to adverse legal consequences for noncompliance (see Policy Framework for details). Specific actions qualifying as appropriate will be defined in State agreements.

OVERALL PROGRAM AUTHORITIES AND MANAGEMENT

Under §§402(c)(2) and 304(i)(2) of the CWA, EPA has the obligation to ensure that approved NPDES State programs continue to meet minimum statutory and regulatory provisions in terms of legal authority, procedures, funding, manpower and personnel qualifications. In addition, EPA has a responsibility to examine State NPDES programs periodically to assess their demonstrated progress in carrying out the basic goals and objectives of the Clean Water Act and in achieving results.

Evaluation and oversight for overall program management should be based on the following criteria:

- Adequate statutory and regulatory authority to administer the Federal NPDES program: The Region should ensure that, in accordance with the CWA and the NPDES regulations (40 C.F.R. §123.62(e)), approved State programs are revised as necessary to reflect changes to Federal statutory and regulatory requirements, and that modifications to approved State programs conform to the NPDES regulations. Any modifications to approved programs that are needed as a result of changes to Federal legal requirements must be completed within one year of promulgation of the changed Federal requirements when changes to State regulation(s) are needed and within two years when changes to State statute(s) are needed. The Region is responsible for assessing each approved State's statutory and regulatory authority, as well as the adequacy of its funding and staff qualifications to administer the NPDES program, and for initiating appropriate and timely follow-up action as needed when deficiencies are identified. The Region should conduct a complete review of the statutory and regulatory authority for all NPDES State programs by the end of FY 1986, and should conduct regular assessments thereafter, as needed.

° Demonstrated ability to set program priorities and to carry out the NPDES program in an effective manner: In addition to evaluating the administering agency's performance in carrying out its operational responsibilities as set forth earlier in this guidance, the agency's overall effectiveness should be assessed based on its demonstrated progress towards achieving the goals and objectives of the CWA. Listed below are four goals, which, if achieved, would provide sound evidence that the administering agency is managing the operational aspects of the NPDES program with positive results:

-- Demonstrated ability consistently to issue timely, high-quality permits: The administering agency's permit program should be assessed based on its performance in issuing, reissuing and modifying permits to eliminate any existing backlogs consistent with national priorities and time frames, and in avoiding the development of new backlogs of expired or unissued permits, especially major permits. As general goals, permit programs should strive to assure that: the permit backlog remains consistently below 10 percent of all permittees; all permits reflect BAT/BCT based on promulgated guidelines or BPJ, or water quality limits, as appropriate; and/or all water quality problems (including toxics problems) attributable to point source dischargers are adequately addressed by requirements in permits which, if met, would eliminate the problems.

-- Demonstrated ability to consistently establish and oversee local pretreatment programs that are appropriately administered on a continuing basis: The administering agency's effectiveness should be assessed in terms of its performance in establishing all required local pretreatment programs, overseeing implementation of these local programs following approval, and, where necessary, assuming direct implementation of the program. Where an NPDES State does not yet have the authority to administer the pretreatment program, the State should be evaluated based on its progress towards assumption of the program.

-- Demonstrated ability to initiate appropriate and and timely enforcement actions against noncompliers: The administering agency's enforcement program should be assessed based on its performance in taking appropriate and timely enforcement responses, especially against permittees that are in significant noncompliance. As a general goal, the administering agency should strive to take appropriate formal enforcement responses against 100 percent of its significant noncompliers before they appear on two consecutive QNCRs for the same violation (generally within 60 days of the first QNCR) if the permittee has not returned to compliance. All other instances of noncompliance should be addressed consistent with the procedures and time frames in the administering agency's EMS.

-- Demonstrated progress in achieving high or improving rates of continuing compliance: The administering agency's compliance and enforcement efforts should be assessed based on its historical compliance trends in terms of the percentage of permittees in significant noncompliance with final limits, interim limits, and compliance schedules. In working towards a national goal of full compliance, Regions and States should establish annual compliance goals based, at least in part, upon national goals as articulated in the Annual Agency Operating Guidance.[7]

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[7] For example, the FY 1985 Agency Operating Guidance says that "by the end of FY 1985, completed major P.L. 92-500 facilities should be achieving compliance rates well above 90% (SNC definition)."

Annual goals should be set on a case-by-case basis, and should be based on the State's current compliance rate plus a percentage improvement. Where the administering agency is below the goal, it should develop an achievable plan for making progress towards the goal over a reasonable period of time.

PROCESS FOR CONDUCTING OVERSIGHT OF STATE NPDES PROGRAMS

Based upon the general criteria outlined in this document, as well as the specific annual goals and priorities in the Annual Agency Operating Guidance, the Regions and States should negotiate individual agreements that clearly define performance expectations for the NPDES program (including pretreatment), as well the the respective roles and responsibilities of the Region and the State in administering the NPDES program (including pretreatment). These may be separate agreements between the Region and the State, and/or part of the overall §106 work program or State/EPA agreement processes.

The agreements should contain requirements for key outputs, which the Region should audit periodically based on the specific arrangements contained in the agreements. The Region should supply the State with written reports of its audit findings, and should make specific recommendations and suggestions for program improvements; the Region should discuss major problems with the State as soon as they are discovered.

The Region should tailor the level and the frequency of its audits to the State's overall performance in each specific program area. States that have consistently demonstrated their ability to adhere to or to exceed national program goals and priorities and to meet or to exceed national performance expectations may be audited less frequently (annually) and/or less extensively; other States may receive more frequent and/or more detailed audits by the Region. Where a State exhibits continued poor performance, the Region should make recommendations for changes and should take other action(s) as appropriate.[8] The criteria and goals in the earlier sections of this guidance provide the Region with a general baseline for determining the proper level and frequency of oversight of a State NPDES program.

The Region should conduct a comprehensive assessment of the operational elements of each State NPDES program at least once a year prior to the Office of Water mid-year evaluation. This review may be a summary of the results of the periodic program evaluations that were performed during the year, and should provide the State with an opportunity to explain its activities and progress in areas of its NPDES program that are not directly related to national or Regional goals and priorities. At the conclusion of the annual review, the Region should supply the State with a written report that outlines the State's accomplishments and areas where improvement is needed, as well as any agreements that were reached on resolving problems that were identified during the review.

CRITERIA FOR DIRECT FEDERAL ENFORCEMENT

Under State delegation, EPA has the right to initiate an enforcement action in a State. The Region and State should

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8. See the "Policy Framework" for details.

have a process for notice and consultation with the State prior to initiating direct EPA enforcement action. The process should include a discussion between the Region and State with respect to the circumstances surrounding the specific noncompliance situation and the appropriate enforcement response. Attachment A is a generic outline for a process that Regions and States might use in determining when to initiate Federal enforcement action.

Using this advance consultation process, there will often be cases where the Region and the State reach mutual agreement that Federal action is more appropriate. EPA may also initiate direct Federal enforcement action where the Region determines that Federal action is necessary because the case meets any of the following criteria: legal precedent under national environmental law(s), unresolved interstate issue(s), or violation(s) of an EPA order or consent decree; and/or where a Region determines a State has failed to initiate timely and appropriate formal enforcement action (as prescribed earlier in this guidance).

In all instances, the Region will adhere to the established process for advance notice and consultation with the State. The discussion should include the option of the Region issuing a Notice of Violation (NOV) to the State indicating its intent to institute formal enforcement action in 30 days if the State fails to properly enforce and the the source fails to return to compliance, or the option of foregoing the NOV process in favor of immediate EPA action against the permittee. This should be done in accordance with State delegation agreements and Memoranda of Understanding.

MODEL

SIGNIFICANT NONCOMPLIANCE ACTION PROGRAM (SNAP)

MEMORANDUM OF UNDERSTANDING

PURPOSE:	To provide for routine consultation and coordination of EPA/State enforcement activities, and for EPA oversight of the State's compliance and enforcement programs.
SCOPE:	The QNCR, furnished by the NPDES State in accordance with Federal regulations, will serve as one of the basic mechanisms for coordinating and overseeing activites involving major permittees. Supplementary compliance information on P.L. 92-500 minor permittees will be submitted in accordance with written policy and guidance from EPA Headquarters (SPMS and OWEG).
PROCESS, SCHEDULING AND LOCATION:	At least once each quarter, EPA and the State will discuss the status of all permittees that appear on the QNCR or supplementary submittal. The discussion should take the form of a meeting wherever possible. [Note: a conference call may be substituted where distances are prohibitive]. The meeting will take place on the work day closest to exactly four weeks prior to the stipulated State submission date for the next QNCR. The location of the meeting will alternate between EPA and a State office.
PREPARATION:	EPA Regional staff will review the State QNCR, which must be prepared and submitted in accordance with Federal Regulations and written policy guidance from EPA Headquarters. EPA Regional staff will also review supplementary compliance information on minor permittees, which should be prepared and submitted in accordance with EPA guidance and policy. Six weeks prior to the meeting, EPA will formally transmit to the State its detailed comments regarding items that appeared on the State's preceding QNCR. EPA's comments should include: the permittee(s) in question; the State action(s) in question; and the recommended action to be taken by the State and/or EPA.

PREPARATION: (cont.)

Three weeks prior to the meeting, the State will furnish a response to EPA's list of concerns, including the State's action to obtain the permittee's compliance.

Two weeks prior to the meeting, the lead individuals from EPA and the State will agree on the list of permittees that will be discussed. The list will include those permittees from the preceding step that EPA wants to discuss at greater length, as well as cases where the State is seeking Federal intervention.

At least one week prior to the meeting, EPA will prepare the agenda and forward it to the State's lead individual.

GROUND RULES: It is understood that no permittee should remain in noncompliance for the same violation on two consecutive QNCRs without: 1) being returned to compliance; or 2) taking formal enforcement action directed at obtaining sustained compliance.

Discussion of a permittee's noncompliance does not constitute an action to cause compliance. The discussion must result in a conclusive, mutual understanding by EPA and the State of the formal actions that will be taken by a date certain to bring about compliance and/or to penalize the recalcitrant permittee.

Prior to the meeting, all permittees that appear on the QNCR will be addressed in the State's own compliance strategy/tracking system through the following procedure or one similar to it:

-- The State must hold preliminary meeting(s) with its field offices (if any) to define, clearly and concisely, the State's strategy for achieving compliance on a case-by-case basis. The strategy will include a description of the individual permittee, the nature of the violation, and the State's plan for handling each violation. It will be forwarded to EPA.

-- During the meeting(s), ample time must be allotted for a full, constructive discussion and disposition of all agenda items.

-- As a result of the discussion, the State may adjust the compliance strategies. Any modifications will require consultation with the State's field offices (if any). In such cases, the State will forward the amended strategies to EPA.

GROUND RULES: (cont) The common goal of all parties is to cause permittees to achieve prompt and sustained compliance. There may be cases where it is impossible for EPA to agree with the State's actions to achieve this goal. In cases where agreement cannot be reached, both EPA and the State should avoid extended debate and should clearly define the actions that each party intends to take. Discussion should then move to the remaining items on the agenda.

Where there are significant differences of opinion, EPA and the State should present the divergent viewpoints to their respective Directors immediately following the meeting. The Directors will ultimately decide the actions to be taken by their respective Divisions and, as appropriate, will discuss with each other the decisions.*

PARTICIPANTS: The lead participants will be the Chief/Director from the appropriate Branches in the EPA and State offices. It is essential that the same individual participates in all four meetings held each year because commitments are made at the meetings. Other individuals may be asked to participate based upon the specific issues to be discussed at the meeting, (technical expertise, Construction Grants, etc.); EPA and State legal staff may also participate. The exact participants will be determined when the agenda is finalized.

MINUTES: The State will provide the minutes to the EPA lead individual within two weeks after the meeting. EPA must submit its detailed comments (if any) within one week; if no comments are submitted within the allotted time, the minutes will be considered final. The minutes will describe the actions that EPA and/or the State expect to take, including independent EPA action such as issuance of either NOVs or AOs. For the sake of brevity, the minutes can reference the submittals received prior to the meeting.

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Director
State Water Program Office

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Director
Water Management Division,
U.S.EPA, Region _______

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* Decisions should be escalated to the Division Directors as the exception rather than the rule.

FEATURE

Municipal compliance—another view

David J. Schaeffer, Harold W. Kerster, and Konanur G. Janardan

The U.S. General Accounting Office (GAO) studied the noncompliance rates (Table 1) of a random sample of 531 major dischargers—274 municipal and 257 industrial—in six states (Iowa, Louisiana, Missouri, New Jersey, New York, and Texas).[1] GAO estimated that 82% of these dischargers exceeded their monthly average permit limits by 50% or more for at least one pollutant at least once during an 18-month study (Table 1). Most dischargers exceeded their permit limits for more than 1 month, and many for more than 6 months. GAO estimated that 31% of all dischargers exceeded permit limits in significant noncompliance at some point during the 18-month review period. GAO defined significant noncompliance as an effluent concentration that exceeds permit limits by 150% for at least 4 consecutive months. One purpose of this study is to reanalyze, to the extent possible, the highly condensed summaries of data in the GAO report. A second purpose is to examine the statistical basis for evaluating compliance.

Discussion

Evaluation of data in GAO report. Interviews (by Schaeffer) with the GAO staff confirmed that the published report[1] represents the extent of the data collection effort. GAO did not compile data on the rate that permit limits were exceeded for individual pollutants, or tabulate the numbers of facilities that exceeded their limits a specific number of times. Although these omissions place limits on revaluation and interpretation or the GAO data, it is possible to extract useful information.

Some initial assumptions (that will be substantiated later in the paper) are necessary because of the lack of information about the numbers of constituents examined for each facility and the number of times a pollutant exceeded the limit. GAO examined both concentration and load, but these seem to be highly correlated and results noted here are only for concentration noncompliance.

- Noncompliance rates for all pollutants are independent of each other within a plant.
- Municipal facilities and industrial facilities are independent categories.
- Facilities within a category are independent.
- States are not distinguishable.
- Noncompliance rates are unknown and generally are different for each pollutant for each facility.

Several questions concerning the data in Tables 1 and 2 are relevant to the issue of compliance or noncompliance. The remainder of this paper addresses these in question-and-answer form.

- The monthly average for a pollutant concentration either complies or does not comply with permit limitations. Hence, for any constituent, the probability of noncompliance has a binomial distribution. What is the expected distribution of the mixture of binomial distributions taken over all pollutant and treatment plant combinations? Under what circumstances (what statisticians call "chance mechanism") does the data in Table 1 arise? Do the data in Table 1 fit the expected distribution, and with what probability, *P*?

As noted, the probability of noncompliance for a pollutant is expected to follow a binomial distribution given by:

$$P(n) = \binom{N}{n} p^n q^{N-n} \qquad (1)$$

Where, $P(n)$ is the probability of observing n times a pollutant exceeds limits ($n = 0, 1, 2, \ldots, N$) out of N total observations (where $N = 18$ for GAO, $N = 15$ for EPA, and $N = 15$ and $N = 21$ for Illinois), p is the probability of exceeding limits and q ($= 1 - p$) is the probability of compliance.

There is a different p for each facility for each pollutant, and the data in Table 1 result from mixing hundreds of binomially distributed outcomes. A reasonable model for this mixing is that the individual probabilities p are from a beta distribution. This gives rise to the beta-binomial distribution (also called negative hypergeometric[2]). This distribution is a special case of a contagion distribution (Markov-Polya distribution or Polya-Eggenberger distribution) in which the contagion approaches zero. A contagion distribution is one in which the probability of occurrence changes from event to event. The chance mechanisms associated with the

Markov-Polya distribution can provide additional insights into the processes leading to data tabulated by GAO. For example, if the Markov-Polya distribution fits the data and the beta-binomial does not, it can be inferred that there will be more noncompliance events if one noncompliance event has occurred, than if none have occurred.

Noncompliance rates for municipalities in Iowa, Louisiana, Missouri, New Jersey, and Texas fit the beta-binomial distribution; noncompliance rates for New York municipals did not. The convolution (pooling) of beta-binomial distributions is not beta-binomial, so data was not pooled. For the five states fit by the beta-binomial, noncompliance events are nearly independent, so the chance of noncompliance in the future is independent of noncompliance in the past. In contrast, noncompliance rates in New York are higher than expected on the basis of a beta-binomial model. These rates exhibit contagion so that occurrence of a noncompliance event increases the probability of additional noncompliance events.

Industrial noncompliance rates for each of the six states are fit by the beta-binomial distribution. However, examination of the coefficients of the distributions suggests that noncompliance rates in Texas may differ substantially from rates in the other states.

- Are violation rates the same in each state? The above results indicate that municipal dischargers in five of the states (not New York) have noncompliance rates that conform with the beta-binomial distribution model. Therefore, do the noncompliance rates in these states come from the same statistical population? The statistical null hypothesis being tested is: Are the five states homogeneous with respect to the extent of noncompliance? The alternative hypothesis is that they come from different statistical populations. The test of the hypothesis is performed using a chi-square test of homogeneity for a 5 × 6 table with 20 degrees of freedom (df). Because chi-square is 23.3 and the rejection criterion is ≥ 31.40 ($p - 0.95$), the hypothesis of homogeneity is accepted. (If New York is included, chi-square is 51.0 and the hypothesis of homogeneity is rejected.)

Table 1—Summary of frequency of NPDES permit noncompliance by selected dischargers during the period October 1, 1980 to March 31, 1982.

State	Discharger type	Sample size	Frequency in months						Significant violator
			1-3	4-6	7-9	10-12	>12	Total	
Iowa	Municipal	38	9	7	3	5	10	34	13
	Industrial	25	8	4	2	3	3	20	4
	Total	63	17	8	5	8	13	54	
Louisiana	Municipal	38	3	5	4	8	13	33	15
	Industrial	50	13	9	5	4	2	33	5
	Total	88	16	14	9	12	15	66	
Missouri	Municipal	43	11	7	8	2	11	39	15
	Industrial	37	11	4	5	4	6	30	8
	Total	80	22	11	13	6	17	69	
New Jersey	Municipal	51	10	6	5	7	11	39	17
	Industrial	49	8	4	3	1	3	19	12
	Total	100	18	10	8	8	14	58	
New York	Municipal	50	12	2	4	6	19	43	20
	Industrial	50	13	12	4	1	5	35	9
	Total	100	25	14	8	7	24	78	
Texas	Municipal	54	14	8	6	7	6	41	8
	Industrial	46	19	9	3	0	1	32	4
	Total	100	33	17	9	7	7	73	
Total	Municipal	274	59	35	30	35	70	229	
	Industrial	257	72	42	22	13	20	169	
	Total	531	131	77	52	48	90	398	
Illinois	Municipal	162	35	11	6	7	7	66[a]	N/A
		162	37	12	7	7	9	69[b]	N/A

[a] Illinois noncompliance for BOD and TSS for a 15-month period starting January 1, 1981.

[b] Illinois noncompliance for BOD and TSS for a 21-month period starting April 1, 1982 and ending December 31, 1983.

Although the industrial dischargers in all states have noncompliance rates in conformity with the beta-binomial distribution, chi-square is 44.2 and the hypothesis of homogeneity is rejected at $p > 0.975$). If Texas is included the hypothesis of homogeneity is accepted at $p < 0.975$. Noncompliance rates are nearly the same in the remaining five states.

- The U.S. Environmental Protection Agency (EPA) reviewed the same data and excluded 133 facilities with only interim permits. EPA considers a facility in noncompliance if it is not in compliance at the end of a quarter, regardless of past performance. EPA's compliance rate for 398 facilities in the sample are in Table 2. There are two main questions concerning the GAO data in Table 1: First, what the the expected noncompliance rates using EPA's definition? The interpretation of EPA's noncompliance definition used here is that a facility is in noncompliance for the entire quarter if it exceeds a permit limit by 150% at the end of that period. The probability of noncompliance is obtained from the parameters of the fitted distribution, *P*. The chance of noncompliance in any month is 6/18. Assuming that these probabilities are independent of each other, the probability of being in noncompliance at the end of the

Table 2—Quarterly noncompliance rates for January 1, 1981-March 31, 1982 calculated by the U.S. Environmental Protection Agency.

	Municipal	Industrial	Total municipal and industrial composites
March 1981	30%	14%	22%
June 1981	24%	14%	19%
September 1981	25%	10%	17%
December 1981	27%	11%	19%
March 1982	35%	10%	22%

Table 3—Expected noncompliance rates for facilities obtained from GAO's rates for concentration noncompliance as given in Table 1 and U.S. EPA's definition of noncompliance.

	Municipal				Industrial			
State	Alpha[a]	Beta	Rate	u-rate	Alpha	Beta	Rate	u-rate
Iowa	0.89	0.73	0.18	0.15	0.88	1.32	0.13	0.12
Louisiana	0.83	0.47	0.21	0.19	0.85	2.06	0.10	0.10
Missouri	1.02	0.86	0.16	0.14	0.79	0.99	0.15	0.13
New Jersey	0.55	0.60	0.16	0.15	0.22	0.98	0.08	0.11
New York	—	—	—	0.17	0.80	1.89	0.27	0.11
Texas	0.78	1.18	0.13	0.13	3.61	12.65	0.07	0.07
All	—	—	—	0.15	—	—	—	0.10
Illinois-1[b]	0.18	0.69	0.07	0.18	—	—	—	—
Illinois-2	0.19	0.56	0.08	0.11	—	—	—	—

[a] Alpha and beta are fitted parameters of the beta binomial distribution, and p = alpha/(alpha + beta).

[b] Illinois-1 data is for the period January 1, 1983-March 31, 1982 (15 months) and only for BOD and TSS. Illinois-2 data is for the period January 1, 1981-December 31, 1983.

quarter is given by their product, $(6/18)$ (P). The expected rates are given in Table 3 (rate) as about 17% for municipal and 13% for industiral. These rates are not statistically significant (by chi-square) from the rate $p = 0.10$ posited above for a hypothetical plant that meets its design performance criteria.

A less precise method of estimating the probability of noncompliance is $P' = \Sigma\, n_i c_i / 18\, \Sigma\, n_i$, where n_i is the number of facilities with c_i violations, $c_i = 0, 2, 5, 8, 11, 14$ for the six rates used by GAO. Because the chance of a violation at the end of one of the six quarters is 6/18, the proportion of facilities not in compliance is $P'/3$ (Table 3, u-rate).

Second, using the answers to the question above, are the rates in Table 2 consistent, or is EPA's sample biased relative to the total GAO data base? Although the statistical conclusion concerning the 133 facilities on interim permits excluded by EPA (probably municipal) follows logically from an examination of the consistency of compliance rates, it is presented first. The conclusion is that these facilities had noncompliance rates about the same as, or lower than, the noncompliance rates of the remaining facilities.

[redacted]

[redacted]

- Which definition of noncompliance is best? In one sense, the definitions are equally good or bad, the distinctions being what one is trying to prove. The real issue addressed by GAO is whether or not treatment plants are performing as designed, and in this regard neither GAO's definition of noncompliance nor EPA's has any statistical valid-

[redacted]

One factor affecting the size of GAO's significant noncompliance rates is definitional, the other is statistical. The definitional problem is that GAO included fecal coliform and flow, pollutants likely to have high noncompliance rates (particularly for the 133 facilities on interim limits). Fecal coliform is a meaningless measure, and flow cannot be controlled by the plant and is unrelated to treatment plant performance; their inclusion is a misspecification of the problem which inflates the noncompliance rate by an unknown amount. Examination of Illinois noncompliance rates for 162 major municipal plants (Table 3) for biochemical oxygen demand (BOD) and total suspended solids (TSS) suggests that fecal coliforms and flow account for half of GAO's noncompliance.

The statistical problems are complex, and are just summarized briefly. The most important assumption which must be made is that permit limits are meaningful and indicate plant performance. Setting appropriate limits is a very complex problem, and one which has been inadequately, and certainly not comprehensively or scientifically, studied. Assuming that through chance, good engineering, application of the body of theory which does exist, or some combination of these, that most permit limits are meaningful, then the limits and compliance criterion can be examined.

A treatment plant is sampled n days during the course of a month with observations $x_1, x_2, \ldots, x_n$. The logarithms of these values follow a normal (bell-shaped) distribution, and the observations follow a lognormal distribution. The median of N months of samples is the geometric mean, G. For a lognormal distribution, neither an individual monthly average nor the N-month arithmetic average have any particular statistical meaning. One consequence of lognormality is that a statistical model of treatment plant performance cannot be developed from daily monitoring report (DMR) monthly averages. Another consequence is that monthly long-term averages lie above the geometric mean. Arithmetic averages weight high values more than low values.

Consider a permit limit of 30 mg/L for BOD: in common practice, engineers would design the treatment plant to produce an average dry weather effluent of about 15 mg/L, and a maximum-flow effluent of 30 mg/L. The expectation is that the effluent will exceed about half the time and 30 mg/L 5 to 10% of the time. The lognormal distribution corresponding to these requirements is easy to generate graphically, and corresponds to previous recommendations.[5] Specifically, 15 mg/L is the median (50 percentile) and 30 mg/L to the 90% fractile of the distribution of monthly averages. Because distributions for other limits are mathematically parallel to the one developed here, excursion limits for any pollutant have the meanings shown in Table 4.

Table 4—Expected noncompliance rates for various noncompliance multipliers.

Multiplier	Probability	Expected noncompliance rate
1.2	95%	5%
1.4	97.5%	2-3%
1.5	99%	1%

In most quality assurance applications, the 95% fractile of the distribution is chosen as the upper limit. Hence, the recommended multiplier is 1.2, and should not exceed 1.4. Table 4 shows that GAO's multiplier of 1.5 is conservative (as they claim), and underestimates the extent of noncompliance.

- What is the probability of having at least 4 consecutive months (GAO's significant noncompliance) out of 18 months out of compliance for one or more pollutants by 50% or more for $k = 1, 2, \ldots, 20$ pollutants? In general, the number of samples which must be taken from a binomially distributed variate (here, noncompliance events) before violations of run length r occur is[6] $p_r[(N-1)q + 1]$ if the probability of occurrence is p and the probability of nonoccurrence is q $(= 1 - p)$. If the probability of a month being in noncompliance is $p \leqq 0.2$, the probability of being in noncompliance $r \geq 4$ months in a row out of $N = 18$ months is $\leqq$ 0.02. As discussed [redacted]

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